D. Nicholson

THE *Whole Duty of Man* According to the LAW OF NATURE.

By that famous Civilian

SAMUEL PUFFENDORF

Professor of the *Law of Nature* and *Nations*, in the University of *Heidelberg*, and in the *Caroline* University; afterwards Counsellour and Historiographer to the K. of *Sweden*, and to his Electoral Highness of *Brandenburg*.

Now made English.

Licensed and Entred according to Law.

——— *Quod ad nos*
Pertinet, & nescire malum est, agitamus. ———
Hor. S. 2. 7.

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To his Honour'd Friend

Mr. *GEORGE WHITE*

Of *London*, MERCHANT;

This TRACTATE

Concerning the

Law of Nature

IS

Offer'd, Dedicated, Preſented

BY

His humbleſt

and moſt obliged Servant,

The Tranſlator.

TO THE
READER.

THE *Tranſlator having obſerv'd, in moſt of the Diſputes wherewith the preſent Age is diſquieted, frequent Appeals made, and that very properly, from* Laws and Ordinances of a meaner Rank *to the everlaſting* Law of Nature, *gave himſelf the Pains, to turn over ſeveral Writers on that Subject. He chanc'd, he thinks with great Reaſon, to entertain an Opinion that this Author was the cleareſt, the fulleſt and the moſt unprejudic'd of any he met with: and hereupon that he might the better poſſeſs himſelf of his Reaſonings, he attempted to render the Work into Mother-Tongue, after he had firſt endeavoured to ſet ſeveral better hands upon the Under-*

taking, who all for one Reaſon or other declin'd the Toil. He thought when 'twas done, it might be as acceptable to one or other to read it, as it had been to himſelf to tranſlate it. If he have not done right to the Author, as he hopes he has not miſs'd in any material Point, he is very willing to be corrected.

The Work, 'tis true, is as it were, an Epitome of the Author's large Volume; but having been extracted and publiſht by Himſelf, the Reader cannot be under any doubt, but that he has the Quinteſſence of what is there deliver'd. What is par'd off, being moſtly Caſes in the Civil Law, Refutations of other Authors, and ſome Notions too fine and unneceſſary for a Manual.

Concerning the Author 'tis enough to ſay, that he has ſurely had as great regard paid him from Perſonages of the higheſt degree, as perhaps ever was given to the moſt learned of men; being invited from his Native Country, firſt by the Elector Palatine to be Profeſſor of the Law of Nature and Nations

tions in the Univerſity of Heidelberg; *then by the King of* Sweden *to honour his new-raiſed Academy by accepting the ſame Charge therein, and afterwards being admitted of the Council and made Hiſtoriographer both to the ſame King, and to his Electoral Highneſs of* Brandenburgh: *Where, except he be very lately dead, he lives at this time in the greateſt reſpect of all men of Senſe and Underſtanding.*

The AUTHOR'S PREFACE.

HAD not the *Cuſtom* which has ſo generally obtain'd among Learned men almoſt procur'd to itſelf the force of a *Law*, it might ſeem altogether ſuperfluous to premiſe a Word concerning the Reaſon of the preſent Undertaking; the Thing itſelf plainly declaring my whole Deſign to be the giving as ſhort and yet, if I miſtake not, as *plain* and *perſpicuous* a *Compendium* of the moſt material Articles of the **Law of Nature**, as was poſſible; and this, leſt if thoſe who betake themſelves to this ſort of Study ſhould enter the vaſt Fields of Knowledge without having

having fully imbib'd the Rudiments thereof, ſhould at firſt ſight be terrified and confounded by the Copiouſneſs and Difficulty of the Matters occurring therein. And at the ſame time it ſeems plainly a very expedient Work for the Publick that the minds of Youth eſpecially ſhould be early imbued with that *Moral Learning*, for which they will have ſuch manifeſt occaſion and ſo frequent uſe through the whole Courſe of the Lives. And although I have always look'd upon it as a Work deſerving no great Honour, to Epitomize the larger Writings of others, and more eſpecially ones own; yet having thus done out of Submiſſion to the commanding Authority of my Superiors, I hope no honeſt man will blame me for having endeavour'd hereby the improvement of the Underſtandings of young Men more particularly; to whom ſo great regard is to be had, that whatſoever Work is undertaken for

their

their ſakes, though it may not be capable of great Acuteneſs or ſplendid Eloquence, yet it is not to be accounted unworthy of any mans Pains. Beſide that no Man in his Wits will deny that theſe Principles thus laid down are more conducive to the underſtanding of all Law in general, than any Elements of the Law Civil can be.

And this might have ſuffic'd for the preſent, but I am minded by ſome, that it would not be improper to lay down ſome few Particulars, which will conduce much to a right Underſtanding of the Conſtitution of the *Law of Nature*, and for the better aſcertaining its juſt Bounds and Limits. And this I have been the more ready to do, that I might on this occaſion obviate the Pretences of ſome over-nice Gentlemen who are apt to paſs their ſqueamiſh Cenſures on this ſort of Learning, which in many Inſtances is wholly ſeparate from their Province.

Now

Now 'tis very manifeſt, that Men derive the Knowledge of their Duty, and what is fit to be done, or to be avoided in this Life, as it were from three Springs or Fountain-Heads; to wit, from the Light of Nature, from the Laws and Conſtitutions of Countries, and from the ſpecial Revelation of Almighty God. From the firſt of theſe proceed all thoſe moſt common and ordinary Duties of a man, more particularly thoſe that conſtitute him a *ſociable Creature* with the reſt of Mankind; from the ſecond are derived all the Duties of a Man, as he is a *Member* of any particular *City* or *Common-wealth*; from the third reſult all the Duties of a *Chriſtian* Man. And from hence proceed three diſtinct Sciences; the firſt of which is of the *Law of Nature*, common to all Nations; the ſecond is of the Civil or Municipal Law peculiar to each Country, which is or may be as manifold and various as there

are

are different States and Governments in the World: the third is Moral Divinity, as it is contra-distinct to that Part of Divinity, which explains the Articles of our Faith.

Each of these Sciences have a peculiar way of proving their Maxims, according to their own Principles. The *Law of Nature* asserts that this or that thing ought to be done, because from *right Reason* it is concluded that the same is necessary for the Preservation of Society amongst men.

Of *Civil Laws* and Constitutions, the supreme Reason is the *Will* of the *Law-giver.*

The Obligation of *Moral Divinity* lies wholly in this, because God in the sacred *Scripture* has so commanded.

Now as the Civil Law presupposes the *Law of Nature*, as the more general Science; so if there be any thing contained in the *Civil Law*, wherein the *Law of Nature* is altogether silent, we must not therefore

therefore conclude that the one is any ways repugnant to the other. In like manner if in *Moral Divinity* ſome things are delivered as from Divine Revelation, which by our Reaſon we are not able to comprehend, and which upon that ſcore are above the reach of the *Law of Nature*; it would be very abſurd from hence to ſet the one againſt the other, or to imagine that there is any real Inconſiſtency between theſe Sciences. On the other hand, in the Doctrin of the *Law of Nature*, if any things are to be preſuppoſed, becauſe ſo much may be inferr'd from Reaſon, they are not to be put in Oppoſition to thoſe things which the *holy Scripture* on that Subject delivers with greater Clearneſs, but they are only to be taken in an abſtracted Senſe. Thus, for Example, from the *Law of Nature*, abſtracted from the Account we receive thereof in holy Writ, there may be formed an *Idea* of the Conditi-

on

on and State of the first Man as he came into the World, only so far as is within the Comprehension of *Humane Reason*. Now to set those things in opposition to what is deliver'd in Sacred Writ concerning the same State, would be the greatest Folly and Madness in the World.

But as it is an easie matter to reconcile the *Civil Law* with the *Law* of *Nature*; so it seems a little more difficult to set certain Bounds between the same *Law* of *Nature* and *Moral Divinity*, and to define in what Particulars chiefly they differ one from the other.

And upon this Subject I shall deliver my Opinion briefly, not with any Papal Authority, as if I was exempted from all Error by any Peculiar Right or Priviledge, neither as one who pretends to any Enthusiastick Revelation; but only as being desirous to discharge that Province which I have undertaken, according to the best of my Ability. And, as

I am willing to hear all Candid and Ingenuous Perſons, who can inform me better, and am very ready to retract what I have ſaid amiſs; ſo I do not value thoſe Pragmatical and Poſitive Cenſurers and Buſie-bodies, who boldly concern themſelves with things which no ways belong to them; of theſe Perſons we have a very Ingenious Character given by *Phædrus*: *They run about*, ſays he, *as mightily concern'd, they are very buſie even when they have nothing to do, they puff and blow without any occaſion, they are uneaſie to themſelves, and troubleſome to every body elſe.*

Now the Chief Diſtinction, whereby theſe Sciences are ſeparated from one another, proceeds from the different Source or Spring, whence each derives its *Principles*; and of which I have already diſcours'd. From whence it follows; if there be ſome things, which we are enjoyn'd in Holy Writ either to do or forbear,

bear, the Neceſſity whereof cannot be diſcover'd by Reaſon alone, they are to be look'd upon as out of the Cognizance of the *Law* of *Nature*, and properly to appertain to *Moral Divinity*.

Moreover in *Divinity* the Law is conſider'd as it has the Divine Promiſe annex'd to it, and with relation to the Covenant between God and Man; from which conſideration the *Law of Nature* abſtracts, becauſe the other derives it ſelf from a particular *Revelation* of God Almighty, and which *Reaſon* alone could not have found out. Beſides too there is this Great Difference, in that the main End and Deſign of the *Law of Nature* is included within the Compaſs of this Life only, and ſo thereby a Man is inform'd how he is to live in Society with the reſt of Mankind: But *Moral Divinity* inſtructs a Man how to live as a Chriſtian, who is not oblig'd to live honeſtly and vertuouſly in this World; but

but is beſides in earneſt expectation of the Reward of his Piety after this Life, and therefore he has his Converſation in Heaven, but is here only as a Stranger and a Pilgrim. For altho the Mind of Man does with very great ardency purſue after Immortality, and is extremely averſe to its own Deſtruction, and thence it was that moſt of the Heathens had a ſtrong perſwaſion of the ſeparate State of the Soul from the Body, and that then Good Men ſhould be rewarded, and Evil Men puniſh'd: yet notwithſtanding ſuch a ſtrong Aſſurance of the certainty hereof, upon which the Mind of Man can firmly and entirely depend, is to be deriv'd only from the *Word of God.* Hence it is that the Dictates of the Law of Nature are adapted only to *Humane Judicature*, which does not extend it ſelf beyond this Life; and it would be abſurd in many reſpects to apply them to the Divine *Forum*, which

concerns itſelf only about Theology. From whence this alſo follows, that, becauſe *Humane Judicature* regards only the external Actions of Man, but can no ways reach the Inward Thoughts of the Mind, which do not diſcover themſelves by any outward Sign or Effect; therefore the *Law of Nature* is for the moſt part exerciſed in forming the outward Actions of Men. But *Moral Divinity* does not content itſelf in regulating only the *Exterior Actions*; but is more peculiarly intent in forming the *Mind*, and its internal Motions agreeable to the good Pleaſure of the Divine Being; diſallowing thoſe very Actions, which outwardly look well enough, but proceed from an impure and corrupted Mind. And this ſeems to be the Reaſon why the ſacred Scripture doth not ſo frequently treat of thoſe Actions, that are enjoyned under certain Penalties by Humane Laws, as it doth of thoſe, which, as *Seneca* expreſſes it, are

are out of the reach of any ſuch Conſtitutions. And this will manifeſtly appear to thoſe, who ſhall carefully conſider the Precepts and Virtues that are therein inculcated; although even thoſe Chriſtian Virtues do very much diſpoſe the Minds of Men, towards the maintaining of Mutual Society; ſo likewiſe Moral Divinity does mightily promote the Practice of all the main Duties, that are enjoyned us in our Civil Deportment: So that if you ſhould obſerve any one behave himſelf like a reſtleſs and troubleſome Member in the Common-wealth, you may fairly conclude that the Chriſtian Religion has made but a very ſlight impreſſion on that Perſon, and that it has taken no Root in his Heart. And from theſe Particulars I ſuppoſe may be eaſily diſcovered not only the certain Bounds and Limits which diſtinguiſh the Law of Nature, as we have defin'd it, from Moral Divinity; but it may like-

wiſe be concluded that the Law of Nature is no ways repugnant to the Maxims of ſound Divinity; but is only to be abſtracted from ſome particular Doctrines thereof, which cannot be fathom'd by the help of Reaſon alone. From whence alſo it neceſſarily follows, that in the Science of the Law of Nature, a Man ſhould be now conſidered, as being depraved in his very Nature, and upon that Account, as a Creature ſubject to many vile Inclinations: For although none can be ſo ſtupid, as not to diſcover in himſelf many Evil and Inordinate Affections, nevertheleſs, unleſs we were inform'd ſo much by Sacred Writ, it would not appear that this Rebellion of the Will, was occaſioned by the firſt Mans Tranſgreſſion; and conſequently ſince the Law of Nature does not reach thoſe Things which are above Reaſon, it would be very prepoſterous to derive it from the State of Man, as it was uncorrupt

corrupt before the Fall; eſpecially ſince even the greateſt part of the Precepts of the Decalogue, as they are delivered in Negative Terms, do manifeſtly preſuppoſe the depraved State of Man. Thus for Example, in the Firſt and Second Commandment it ſeems to be ſuppoſed that Mankind was naturally prone to the belief of Polytheiſm and Idolatry. For if you ſhould conſider Man as in his Primitive State, wherein he had a clear and diſtinct Knowledg of the Deity, as it were by a peculiar Revelation; I do not ſee how it could ever enter into the Thoughts of ſuch a one, to frame any thing to himſelf, to which he could pay Reverence inſtead of or together with the true God, or to believe any Divinity to reſide in that which his own Hands had form'd; therefore there was no neceſſity of laying an Injunction upon him in Negative Terms, that he ſhould not worſhip other Gods; but this Plain,

Affirmative Precept would have been ſufficient; Thou ſhalt love, honor and adore God, whom you know to have created both yourſelf and the whole Univerſe. And the ſame may be ſaid of the Third Commandment, for why ſhould it be forbidden in a Negative Precept, to blaſpheme God, to ſuch a one who had at the ſame time a clear and perfect Underſtanding of his Bounty and Majeſty, and who was actuated by no inordinate Affections, and whoſe Mind did chearfully acquieſce in that Condition, wherein he was placed by Almighty God? How could ſuch a one be Guilty of ſo great Madneſs? But he needed only to have been admoniſhed by this Affirmative Precept, That he ſhould glorifie the Name of God. But it ſeems otherwiſe of the Fourth and Fifth Commandments, which as they are Affirmative Precepts, neither do they neceſſarily preſuppoſe the depraved State of Man,

Man, they may be admitted, Mankind being conſidered as under either Condition. But the thing is very manifeſt in relation to the other Commandments, which concern our Neighbour; for it would ſuffice plainly to have enjoyned Man, conſidered as he was at firſt created by God, that he ſhould love his Neighbour, whereto he was beforehand enclined by his own Nature. But how could the ſame Perſon be commanded, that he ſhould not kill, when Death had not as yet faln on Mankind, which entred into the World upon the account of Sin? But now there is very great need of ſuch a Negative Command, when inſtead of loving one another, there are ſtir'd up ſo great Feuds and Animoſities among Men, that even a great Part of them is owing purely to Envy, or an inordinate Deſire of invading what belongs to another; ſo that they make no ſcruple not only of deſtroying

thoſe that are innocent, but even their Friends, and ſuch as have done them ſignal Favors, and all this forſooth they are not aſhamed to diſguiſe under the ſpecious pretence of Religion and Conſcience. In like manner what need was there expreſly to forbid Adultery among thoſe married Perſons, whoſe mutual Love was ſo ardent and ſincere? Or what occaſion was there to forbid Theft when as yet Covetouſneſs and Poverty were not known, nor did any Man think that properly his own, which might be uſeful or profitable to another? Or to what purpoſe was it to forbid the bearing Falſe Witneſs, when as yet there were not any to be found, who ſought after Honor and Reputation to themſelves, by Slandering and aſperſing others with falſe and groundleſs Calumnies? So that not unfitly you may here apply the Saying of *Tacitus*, Vetuſtiſſimi Mortalium, nulla adhuc prava libidine,

bidine, ſine probro, ſcelere, eoque ſine pœna aut coercitionibus agebant; & ubi nihil contra morem cuperent, nihil per metum vetabantur. *Whilſt no corrupt Deſires deprav'd Mankind, the firſt Men lived without Sin and Wickedneſs, and therefore free from Reſtraint and Puniſhment, and whereas they coveted nothing but what was their due, they were barr'd from nothing by Fear.*

And theſe things being rightly underſtood may clear the way for removing this Doubt; whether the Law was different or the ſame in the Primitive State of Nature before the Fall? Where it may be briefly anſwer'd, that the moſt material Heads of the Law were the ſame in each State; but that many particular Precepts did vary according to the diverſity of the Condition of Mankind; or rather that the ſame Summary of the Law was explain'd by divers, but not contrary, Precepts; according to the

different

different State of Man, by whom that Law was to be obſerv'd. Our Saviour reduc'd the Subſtance of the Law to two Heads: *Love God, and Love thy Neighbour*: To theſe the whole *Law of Nature* may be referr'd, as well in the Primitive, as in the deprav'd State of Man; (unleſs that in the Primitive State there ſeems not any or a very ſmall difference between the *Law of Nature*, and *Moral Divinity*.) For that Mutual Society, which we laid down as a Foundation to the *Law of Nature*, may very well be reſolv'd into the Love of our Neighbour. But when we deſcend to particular Precepts, there is indeed a very great difference both in relation to the Commands and Prohibitions. And as to what concerns the Commands, there are many which have place in this State of Mankind, which ſeem not to have been neceſſary in the Primitive State: And that partly becauſe they preſuppoſe ſuch a

Condition,

Condition, as, 'tis not certain, could happen to that moſt happy State of Mankind; partly becauſe there can be no Notion of them, without admitting *Miſery* and *Death*, which were unknown there: As for Inſtance, we are now enjoyn'd by the Precepts of the *Law of Nature*, not to deceive one another in buying or ſelling, not to make uſe of falſe Weights or Meaſures, to repay Money that is lent, at the appointed time. But it is not yet evident, whether if Mankind had continued without ſin, there would have been driven any Trade and Commerce, as there is now in the World, or whether there would then have been any Occaſion for the Uſe of Mony. In like manner if ſuch kind of Communities, as are now adays, were not to be found in the State of Innocence, there would be then likewiſe no Occaſion for thoſe Laws, which are preſuppoſed as requiſite for the well ordering and Go-

vernment

vernment of ſuch Societies. We are alſo now commanded by the *Law of Nature* to ſuccour thoſe that are in want, to relieve thoſe that are oppreſſed, to take care of Widows and Orphans. But it would be to no purpoſe to have inculcated theſe Precepts to thoſe who were no ways ſubject to Miſery, Poverty or Death. The *Law of Nature* now enjoyns us to forgive Injuries, and to uſe our utmoſt Endeavours towards the promoting of Peace amongſt Mankind; which would be unneceſſary among thoſe who never offended againſt the Laws of Mutual Society. And this too is very evident in the Prohibitory Precepts which relate to the Natural not Poſitive Law. For altho every Command does virtually contain in itſelf a Prohibition of the oppoſite Vice; (as for inſtance, he that is commanded to love his Neighbour, is at the ſame time forbidden to do ſuch Actions, as may any ways

ways thwart or contradict this Duty of Love:) yet it ſeems ſuperfluous that theſe things ſhould be ordain'd by expreſs Commands, where there are no diſorderly Inclinations to excite Men to the committing ſuch Wrongs. For the Illuſtration of which, this may be taken notice of, that *Solon* would by no Publick Law enact any Puniſhment for *Parricides*, becauſe he thought that no Child could be guilty of ſo horrid an Impiety. The like whereof we may find in what is reported by *Francis Lopez*, in his Hiſtory of the *Weſt-Indies*, *Chap.* 207. concernning the People of *Nicaragua*; he tells us, that they had not appointed any Puniſhment for thoſe who ſhould kill their Prince; becauſe, ſay they, there can be no Subject, who would contrive or perpetrate ſo baſe an Action. I am afraid it may ſavour too much of Affectation to enlarge any farther in the Proof of what is in itſelf ſo clear and evident.

Yet

Yet I ſhall add this one Example fitted to the meaneſt Capacity. Suppoſe there are two Children, but of different Diſpoſitions, committed to the Care of a certain Perſon; One whereof is Modeſt and Baſhful, taking great Delight in his Studies; the other proves Unruly, Surly, giving himſelf over more to looſe Pleaſures, than to Learning. Now the Duty of both of theſe is the ſame, to follow their Studies; but the particular Precepts proper to each, are different; for it is ſufficient to adviſe the former to what kind of Studies he muſt apply himſelf, at what time and after what manner they are to be followed: But as for the other, he muſt be enjoyned under ſevere Penalties, not to wander abroad, not to Game, not to ſell his Books, not to get others to make his Exerciſes, not to play the good Fellow, not to run after Harlots. Now if any one ſhould undertake in a ſet Diſ-

courſe

courſe to declaim againſt theſe things to him of the contrary Temper, the Child may very well enjoyn him Silence, and bid him inculcate them to any Body elſe, rather than to him, who takes no Delight or Pleaſure in ſuch Practices. From whence I look upon it as manifeſt, that the Law of Nature would have a quite different Face, if we were to conſider Man, as he was in his Primitive State of Innocence. And now ſince the Bounds and Limits of this Science, whereby it is diſtinguiſhed from Moral Divinity, are ſo clearly ſet down, it ought at leaſt to have the ſame Priviledges with other Sciences, as the Civil Law, Phyſick, Natural Philoſophy and the Mathematicks; wherein if any Unskilful Perſon preſum'd to meddle, aſſuming to himſelf the Quality of a Cenſor, without any Authority, he may fairly have that objected to him, which was formerly done by *Apelles* to *Megabyzus* who undertook to talk at random about

about the Art of Painting; Pray, said he, be silent, lest the Boys laugh at you, who pretend to talk of Matters you do not understand.

Now upon the whole, I am contented to submit my self to the Judgment of Discreet and Intelligent Persons; but as for Ignorant, and Spiteful Detracters, 'tis better to leave them to themselves, to be punished by their own Folly and Malice; since, according to the Ancient Proverb, *The Ethiopian cannot change his Skin.*

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THE

Written by the ſame AUTHOR, and Tranſlated by *J. C.*

THE Hiſtory of *Popedom*, containing an Account of the *Riſe*, *Progreſs*, and *Decay* thereof. Sold by *C. Harper* at the *Flower-de-luce* over againſt S. *Dunſtan's* Church in *Fleetſtreet*, and *J. Hindmarſh* at the *Golden Ball* over againſt the *Royal Exchange*, *Cornhill*.

THE

THE *Whole Duty of Man,* According to the LAW of NATURE.

BOOK I. CHAP. I.

Of Human Actions.

I. *What it Duty.*

WHAT we mean here by the word *Duty*, is, that *Action* of a Man, which is regularly ordered according to ſome preſcribed *Law*, ſo far as he is thereto obliged. To the underſtanding whereof it is neceſſary to premiſe ſomewhat, as well touching the nature of a *Human Action*, as concerning *Laws* in general.

II. *What a Human Action.*

BY a *Human Action* we mean not *every motion* that proceeds from the faculties of a Man; but ſuch only as have their Original and Direction from thoſe faculties which God Almighty has endow'd Mankind withal, diſtinct from Brutes; that is, ſuch as are undertaken by the Light of the *Underſtanding*, and the Choice of the *Will*.

III. *Human Capacity.*

FOR it is not only put in the power of Man to *know* the various things which appear in the World, to *compare* them one with another, and from thence to form to himſelf new *Notions*; but he is able to look forwards, and to conſider *what* he is to do, and to carry himſelf to the performance of it, and this to do after ſome certain Manner, and to ſome certain End; and then he can collect what will be the Conſequence thereof. Beſide, he can make a *Judgment* upon things already done, whether they are done agreeably to their Rule. Not that all a mans Faculties do exert themſelves continually, or after the ſame manner, but ſome of them are ſtir'd up in him by an internal Impulſe; and when raiſed, are by the ſame regulated and guided. Neither beſide hath a Man the ſame Inclinations

clinations to every Object, but ſome he deſires and for others he has an averſion: and often, though an Object of Action be before him, yet he *ſuſpends* any motion towards it; and when many Objects offer themſelves, he *chuſes* one and *refuſes* the reſt.

IV. *Human Underſtanding.*

As for that Faculty therefore of comprehending and judging of things, which is called the *Underſtanding*, it muſt be taken for granted, firſt of all, That every Man of a mature Age, and entire Senſe has ſo much Natural Light in him, as that, with neceſſary care and due conſideration, he may rightly comprehend at leaſt thoſe *general Precepts* and *Principles* which are requiſite in order to paſs our lives here honeſtly and quietly; and be able to judge that theſe are congruous to the Nature of Man. For if this at leaſt be not admitted within the bounds of our Humane *Forum*, men might pretend an invincible Ignorance for all their Miſcarriages; becauſe no man in * *foro humano* can be condemned for having violated a Law which it was above his Capacity to comprehend.

* Civil Judicature.

V. THE *Underſtanding* of Man, when it is *rightly inform'd* concerning that which is to be done or omitted, and this ſo, as that he is able to give certain and undoubted Reaſons for his Opinion, is wont to be call'd *Conſcience truly guided.* But when a Man has indeed entertain'd the *true Opinion* about what is to be done or not to be done, the truth whereof yet he is not able to make good by *reaſoning*; but he either drew ſuch his Notion from his Education, way of living, Cuſtom, or from the Authority of perſons wiſer or better than himſelf; and yet no reaſon appears to him that can perſuade the contrary, this uſes to be called *Conſcientia probabilis*, Conſcience grounded upon Probability. And by this the greateſt part of Mankind are govern'd, it being the good fortune of few to be able to enquire into and to know the Cauſes of things.

Conſcience rightly inform'd and probable.

VI. AND yet it chances often, to ſome Men eſpecially in ſingular Caſes, that Arguments may be brought on *both* ſides, and they not be Maſters of ſufficient *Judgment* to *diſcern* clearly which are the ſtrongeſt and moſt weighty. And this is call'd a *doubting Conſcience.* In which

Conſcience doubting.

which Caſe this is the Rule; As long as the Underſtanding is unſatisfied and in doubt, whether the thing to be done be good or evil, the doing of it is to be deferred. For to ſet about doing it before the Doubt is anſwered, implies a ſinful deſign or at leaſt a neglect of the Law.

VII. *Error.*

MEN alſo oftentimes have *wrong apprehenſions* of the matter, and take that to be true which is falſe; and then they are ſaid to be in an *Error*; and this is called *Vincible Error*, when a man by applying due Attention and Diligence might have prevented his falling thereinto; and it's ſaid to be *Invincible Error*, when the perſon with the utmoſt Diligence and Care that is conſiſtent with the common Rules of Life, could not have avoided it. But this ſort of Error, at leaſt among thoſe who give their Minds to improve the Light of Reaſon and to lead their Lives regularly, happens not in the common Rules of living, but only in peculiar matters. For the Precepts of the Law of Nature are plain; and that Legiſlator who makes poſitive Laws, both does and ought to take all poſſible Care, that they may be underſtood by thoſe

who are to give obedience to them. So that this ſort of *Error* proceeds only from a ſupine *Negligence.* But in particular Affairs 'tis eaſie for ſome Error to be admitted, againſt the will and without any fault of the perſon, concerning the Object and other Circumſtances of the Action.

VIII. *Ignorance.* But where Knowledge ſimply is wanting it is called *Ignorance.* Which is two ways to be conſider'd; firſt, as it contributes ſomewhat to the Action; and next, as it was in the perſon either againſt his will or not without his own fault. In the firſt reſpect Ignorance uſes to be divided into *efficacious* and *concomitant.* That, is ſuch as if it had not been, the preſent Action had not been undertaken: This, tho it had not been, it had not hindred the Undertaking. In the latter reſpect the Ignorance is either *Voluntary* or *Involuntary.* The firſt is, when it was *choſen* by the perſon, he rejecting the *means* of knowing the Truth, or ſuffering it to come upon him by not uſing ſuch *diligence* as was neceſſary. The latter is, when a Man is ignorant of that, which he *could* not nor was *obliged* to know: And this again is twofold; for either

either a man may indeed not be able to help his Ignorance for the *preſent*, and yet may be to blame becauſe he *continues* in ſuch a ſtate; or elſe he may not only be for the *preſent* unable to conquer his Ignorance, but may alſo be *blameleſs* that he is fallen into ſuch a Condition.

IX. *The Will.*

THE other Faculty which does peculiarly diſtinguiſh Men from Brutes is called the *Will*, by which as with an internal Impulſe Man *moves himſelf* to Action, and *chuſes* that which beſt pleaſes him; and rejects that which ſeems unfit for him. Man therefore has thus much from his *Will*; firſt, that he has a power to act *willingly*, that is, he is not determin'd by any intrinſick *Neceſſity* to do this or that, but is Himſelf the Author of his own Actions; next, that he has a power to act *freely*, that is, upon the Propoſal of one Object, he may *act* or not *act*, and either entertain or reject: or if divers Objects are propoſed, he may *chuſe* one and *refuſe* the reſt. Now whereas among human Actions ſome are undertaken for their *own* ſakes, others becauſe they ſubſerve to the attaining of ſomewhat *farther*; that is, ſome are as

the *End*, and others as *Means*; as for the *End*, the Will is thus far concern'd, That being once known, this firſt *approves* it, and then moves vigorouſly towards the *atchieving* thereof, as it were driving at it with more or leſs earneſtneſs; and this *End* once *obtain'd* it ſits down quietly and *enjoys* its acquiſt with pleaſure. For the Means, they are firſt to be approv'd, then ſuch as are moſt fit for the purpoſe are *choſen*, and at laſt are *applied* to uſe.

X. *The Will unforc'd.* BUT as Man is accounted to be the *Author* of his *own Actions*, becauſe they are voluntarily undertaken by himſelf; ſo this is chiefly to be obſerved concerning the Will, to wit, that its *Spontaneity* or natural Freedom is at leaſt to be aſſerted in thoſe Actions, concerning which a man is wont to give an Account before any human Tribunal. For where an abſolute *Freedom* of *choice* is wholly taken away, there not the man who *acts*, but he that *impoſed* upon him the Neceſſity of ſo doing, is to be reputed the *Author* of that Action, to which the other unwillingly miniſtred with his ſtrength and Limbs.

FURTHER-

FURTHERMORE, though the Will do always desire good in general, and has continually an Aversion for *Evil* also in general; yet a great *variety* of *Desires* and *Actions* may be found among men. And this arises from hence, that all things that are good and evil do not appear *purely* so to Man, but *mixt* together, the good with the bad and the bad with the good; and because different Objects do particularly affect divers parts, as it were, of a Man; for instance, some regard that good Opinion and Respect that a Man has for himself; some affect the outward Senses; and some that Love of himself, from which he desires his own Preservation. From whence it is, that those of the first sort appear to him as *decorous*; of the second as *pleasant*; and of the last as *profitable*: And accordingly as each of these have made a powerful Impression upon a Man, it brings upon him a peculiar propensity that way-ward; whereto may be added the particular *Inclinations* and *Aversions* that are in most Men to some certain things. From all which it comes to pass, that upon any Action several *sorts* of *Good* and *Evil* offer themselves, which either *are* true or *appear* so; XI. *The Will variously affected.*

ſo; which ſome have more, ſome leſs ſagacity to diſtinguiſh with ſolidity of Judgment. So that 'tis no wonder that one man ſhould be carried eagerly on to that, which another perfectly abhors.

XII. *The Will byaſs'd by Natural Inclinations.*

But neither is the Will of Man always found to ſtand *equally* poiſed with regard to every Action, that ſo the Inclination thereof to this or that ſide ſhould come only from an *internal Impulſe*, after a due conſideration had of all its circumſtances; but it is very often puſht on one way rather than another by *ſome outward Movements*. For, that we may paſs by that univerſal Propenſity to Evil, which is in all Mortals, the Original and Nature of which belong to the Examination of another * *Forum*; firſt, a *peculiar diſpoſition of Nature* puts a particular kind of *byaſs* upon the Will, by which ſome are ſtrongly inclin'd to certain ſorts of Actions; and this is not only to be found in ſingle *Men*, but in whole *Nations*. This ſeems to proceed from the Temperature of the Air that ſurrounds us, and of the Soil; and from that Conſtitution of our Bodies which either was deriv'd to us in the Seed of our *Parents*, or was occaſion'd in us by our *Age*, *Diet*, the want

* The Judgment of the Divines.

want or enjoyment of *Health*, the Method of our Studies or *way* of *Living* and Cauſes of that ſort, beſide the various *formations* of the *Organs*, which the *Mind* makes uſe of in the performance of its ſeveral Offices, and the like. And here, beſide that a man may with due care very much *alter* the *temperament* of his body and *repreſs* the exorbitances of his natural *Inclination*, it is to be noted, that how much power ſoever we attribute hereto, yet it is not to be underſtood to be of that force as to hurry a man into ſuch a violation of the *Law* of *Nature* as ſhall render him obnoxious to the *Civil Judicature*, where evil *Deſires* are not animadverted on, provided they break not forth into external *Actions*. So that after all the pains that can be taken to repel Nature, if it take its full ſwinge, yet it may ſo far be reſtrain'd as not to produce *open Acts* of Wickedneſs; and the *Difficulty* which happens in vanquiſhing theſe Propenſities is abundantly recompenſed in the *Glory* of the Conqueſt. But if theſe Impulſes are ſo ſtrong upon the mind, that they cannot be contained from breaking forth, yet there may be found a way, as it were

were to draw them off, without Sin.

XIII. *By Cuſtom.* THE frequent *Repetition* of Actions of the ſame kind does alſo *incline* the Will to do certain things; and the Propenſity which proceeds from hence is called *Habit* or *Cuſtom*, for it is by this that any thing is undertaken readily and willingly, ſo that the Object being preſented, the Mind ſeems to be forced thitherward, or if it be abſent, the ſame is earneſtly deſirous of it. Concerning which this is to be obſerved, that as there appears to be no *Cuſtom*, but what a Man may by applying a due Care, *break* and *leave off*; ſo neither can any ſo far put a force upon the Will, but that a Man may be able at any time to reſtrain himſelf from any *external Acts* at leaſt, to which by that he is urged. And becauſe it was in the perſons *own Power* to have contracted this *Habit* or no, whatſoever eaſineſs it brings to any Action, yet if that Action be good, it loſes nothing of its value therefore, as neither doth an evil thing abate ought of its Pravity. But as a *good Habit* brings *Praiſe* to a man, ſo an *ill* one ſhews his *Shame*.

XIV. *By Paſſion.* IT is alſo of great conſideration, whether the mind be in a *quiet* and *placid* ſtate

ſtate, or whether it be affected with thoſe peculiar Motions we call the *Paſſions*. Of theſe it is to be known, that how violent ſoever they are, a man with the right uſe of his *Reaſon* may yet conquer them, or at leaſt contain them without the bounds of *Action*. But whereas of the *Paſſions* ſome are raiſed from the appearance of *Good*, and others of *Evil*; and do urge either to the procuring of ſomewhat that is *acceptable*, or to the avoiding of what is *miſchievous*, it is agreeable to Human Nature, that *theſe* ſhould meet among men more *favour* and *pardon*, than *thoſe*; and that according to ſuch degrees, as the Miſchief that excited them was more hurtful and intolerable. For to *want* a *Good* not altogether neceſſary to the preſervation of Nature is accounted more *eaſie*, than to *endure an Evil* which tends to Natures deſtruction.

XV. *By Intoxication.*

FURTHERMORE, as there are certain Maladies, which take away all uſe of the *Reaſon* either perpetually or for a time, ſo 'tis cuſtomary in many Countries, for men on purpoſe to procure to themſelves a certain kind of *Diſeaſe* which goes off in a ſhort time, but which very much confounds the Reaſoning Faculty.

By

By this we mean *Drunkenneſs*; proceeding from certain kinds of Drink and Fumes, which incenſe and diſturb the Blood and Spirits, thereby rendring men very prone to *Luſt*, *Anger*, *Raſhneſs* and immoderate *Mirth*; ſo that many by *Drunkenneſs* are ſet as it were beſide themſelves, and ſeem to have put on *another Nature* than that which they were of, when *ſober*. But as this does not always take away the *whole* uſe of *Reaſon*; ſo as far as the perſon does *willingly* put himſelf in this ſtate, it is apt to procure an *Abhorrence* rather than a *favourable Interpretation* of what is done by its Impulſe.

XVI. *Actions Involuntary.* Now of Human Actions as thoſe are called *Voluntary*, which proceed from and are directed by the Will; ſo if any thing be done *wittingly* altogether againſt the Will, theſe are call'd *Involuntary*, taking the word in the narroweſt ſenſe; for taking it in the largeſt, it comprehends even thoſe which are done through *Ignorance*. But *Involuntary* in this place is to ſignifie the ſame as *forc'd*; that is, when by an external Power which is ſtronger, a man is compell'd to uſe his Members in any Action, to which he yet ſignifies his Diſſent

Diſſent and Averſion by Signs, and particularly by counterſtriving with his Body. Leſs properly thoſe Actions are alſo called *Involuntary*, which by the Impoſition of a great Neceſſity are *choſen* to be done, as the leſſer Evil; and for the Acting whereof the perſon had the greateſt abomination, had he not been ſet under ſuch Neceſſity. Theſe Actions therefore are called *mixt*. With *Voluntary Actions* they have this in common, that in the preſent State of things the Will *chuſes* them as the leſſer Evil. With the *Involuntary* they are after a ſort the ſame, as to the Effect, becauſe they render the Agent either not at all, or not *ſo heinouſly* blameable, as if they had been done ſpontaneouſly.

XVII. *Voluntary Actions imputable*

THOSE Human Actions then which proceed from, and are directed by the *Underſtanding* and the *Will*, have particularly this natural Propriety, that they may be *imputed* to the Doer; that is, that a Man may juſtly be ſaid to be the Author of them, and be obliged to render an *Account* of ſuch his Doing; and the *Conſequences* thereof, whether good or bad are chargeable upon him. For there can be no truer reaſon why any Action ſhould

ſhould be *imputable* to a Man, than that, he did it either mediately or immediately, *knowingly* and *willingly*; or that it was in his power to have done the ſame or to have let it alone. Hence it obtains as the prime Axiom in matters of Morality which are liable to the Human Forum; That every man is accountable for all ſuch Actions, the performance or omiſſion of which were in his *own Choice*. Or, which is tantamount, That every Action, capable of human direction, is chargeable upon him who might or might not have done it. So on the contrary, no man can be reputed the Author of that Action, which neither in itſelf nor in its cauſe, was in *his Power*.

XVIII. *Concluſions from the Premiſes.* FROM theſe Premiſes we ſhall deduce ſome particular *Propoſitions*, by which ſhall be aſcertain'd, What every man ought to be *accountable* for; or, in other words, which are thoſe Actions and Conſequences of which any one is to be charged as *Author*.

The firſt Concluſion. NONE of thoſe Actions which are done by another *man*, nor any operation of whatſoever other *things*, neither any *Accident*, can be imputable to another perſon, but ſo far forth as it was in *his Power*,

Power, or as he was *obliged* to guide ſuch Action. For nothing is more common in the world, than to *ſubject* the Doings of *one Man* to the Manage and Direction of *another*. Here then, if any thing be perpetrated by one, which had not been done, if the other had performed his *Duty* and exerted his *Power*; this Action ſhall not only be chargeable upon him who immediately did the fact, but upon the other alſo who *neglected* to make uſe of his *Authority* and *Power*. And yet this is to be underſtood with ſome reſtriction; ſo as that *Poſſibility* may be taken *morally*, and in a *large* ſenſe. For no *Subjection* can be ſo *ſtrict*, as to extinguiſh *all* manner of *liberty* in the perſon ſubjected, but ſo that 'twill be in his Power to reſiſt and act quite contrary to the direction of his *Superior*; neither will the ſtate of *Human Nature* bear, that any one ſhould be perpetually affix'd to the ſide of another, ſo as to obſerve *all* his motions. Therefore when a *Superiour* has done every thing that was required by the *Rules* of his *Director-ſhip*, and yet ſomewhat is acted amiſs, this ſhall be laid only to the charge of *him* that *did* it. Thus whereas *Man* exerciſes dominion over other *Animals*,

mals, what is done by them to the detriment of another, ſhall be charg'd upon the *Owner,* as ſuppoſing him to have been wanting of due *Care* and *Circumſpection.* So alſo all thoſe Miſchiefs which are brought upon another, may be *imputed* to that perſon, who when he could and ought, yet did not take out of the way the Cauſe and Occaſion thereof. Accordingly it being in the power of Men to *promote* or *ſuſpend* the Operations of many *Natural Agents,* whatſoever Advantage or Damage is wrought by theſe, *they* ſhall be accountable for, by whoſe *application* or *neglect* the ſame was occaſion'd. Beſide, ſometimes there are extraordinary Caſes, when a man ſhall be charg'd with ſuch Events as are above human Direction, as when *God* ſhall do particular *Works* with regard to ſome *ſingle* perſon. Theſe and the like Caſes being excepted, for all the reſt it ſuffices, if a Man can give an Account of his *own doings.*

XIX. *The ſecond Concluſion.*

WHATSOEVER *Qualifications* a Man hath or hath not, which it is *not* in his *power* to exert or not to exert, muſt not be *imputed* to him, unleſs ſo far as he is wanting in *Induſtry* to ſupply ſuch Natural

tural Defect, or does not rowſe up his native Faculties. So becauſe no man can give himſelf an *Acuteneſs* of *Judgment* and *Strength* of *Body*, therefore no one is to be blamed for want of either, or commended for having them, except ſo far as he *improv'd*, or *neglected* the cultivating thereof. Thus *Clowniſhneſs* is not blameable in a Ruſtic, but in a *Courtier* or *Citizen*. And hence it is, that thoſe Reproaches are to be judg'd extremely abſurd, which are grounded upon Qualities, the Cauſes of which are not in our power, as, *Short Stature*, a *deform'd Countenance* and the like.

XX. *The third Concluſion.*

THOSE things which are done through *invincible Ignorance* are not imputable. Becauſe we cannot properly *direct* our Action, unleſs by the Light of the Underſtanding; (and 'tis here ſuppoſed Man is unable to procure ſuch Light) neither are we to blame that we cannot. Now in the common affairs of Life, the word *Poſſible* is to be morally underſtood, and by *Ability* is meant that *Faculty*, *Diligence* and *Circumſpection* which is commonly judg'd to *ſuffice*, and which is well ſupported with probable reaſons.

XXI. *The fourth Conclusion.* *Ignorance* of, or *Error* concerning the *Laws* and that *Duty*, which is incumbent upon every man, does not excuſe from blame. For whoſoever impoſes *Laws* and *Services*, is wont and ought to take care that the Subject have *notice* thereof. And theſe Laws and Rules of Duty generally are and ſhould be ordered to the *Capacity* of ſuch *Subject*, if they are ſuch as he is oblig'd to *know* and *remember*. Hence, he who is the *Cauſe* of the *Ignorance* ſhall be bound to anſwer for thoſe *Actions* which are the effects thereof.

XXII. *The fifth Conclusion.* He who, not by his own fault, wants an *opportunity* of doing his *Duty*, ſhall not be accountable, becauſe he has not done it. Now to a fair occaſion theſe four things are requiſite; 1. That an *Object* of Action be ready: 2. That a proper *Place* be had, where we may not be hindred by others, or receive ſome Miſchief: 3. That we have a fit *Time*, when buſineſs of greater Neceſſity is not to be done, and which may be ſeaſonable for other matters which concur to the Action: and 4. laſtly, That we have natural *Force ſufficient* for the performance. For ſince an Action cannot be atchiev'd without theſe, 'twould be abſurd to blame a man for not

not acting, when he had not an opportunity ſo to do. Thus a Phyſician cannot be accuſed of *Sloth*, when no body is ſick to employ him. Thus no man can be liberal, who wants it himſelf. Thus he cannot be reproved for burying his talent, who having taken a due care to ſet himſelf in a uſeful Station, has yet miſs'd of it: though it be ſaid, *To whom much is given, from him much ſhall be required.* Thus we cannot blow and ſuck all at once.

XXIII. *The ſixth Concluſion.*

No man is *accountable* for not doing that which *exceeded* his *Power*, and which he had not ſtrength ſufficient to hinder or accompliſh. Hence that Maxim, To Impoſſibilities there lies no Obligation. But this Exception muſt be added, Provided, that by the perſons *own fault* he has not *impair'd*, or *loſt* that ſtrength which was neceſſary to the Performance; for if ſo, he is to be treated after the ſame manner, as if he *had* all that power which he *might* have had: For otherwiſe it would be eaſie to elude the performance of any difficult Obligation, by weakening ones ſelf on purpoſe.

XXIV. *The ſeventh Concluſion.*

NEITHER can thoſe things be *imputable*, which one acts or ſuffers by *Compulſion*.

pulſion. For it is ſuppoſed, that 'twas above his power to decline or avoid ſuch doing or ſuffering. But we are ſaid after a twofold manner to be *compell'd*; one way is, when another that's ſtronger than us *violently forces* our Members to do or endure ſomewhat: the other, when one more powerful ſhall *threaten* ſome grievous Miſchief (which he is immediately able to bring upon us) unleſs we will, as of our own accord, apply our ſelves to the doing of this, or abſtain from doing that. For then, unleſs we are *expreſly oblig'd* to take the Miſchief to our ſelves which was to be done to another, he that ſets us under this *Neceſſity*, is to be reputed the *Author* of the Fact; and the ſame is no more chargeable upon us, than a *Murder* is upon the Sword or Ax which was the *Inſtrument.*

XXV. *The eighth Concluſion.*

THE Actions of thoſe who *want* the uſe of their *Reaſon* are not imputable; Becauſe they cannot *diſtinguiſh* clearly what they do, and bring it to the Rule. Hitherto appertain the Actions of *Children*, before their reaſoning Faculties begin to exert themſelves. For though they are now and then chid or whipt for what they do; yet this is not as if they had deſerv'd

deſerv'd *Puniſhment*, properly ſo called in the Human *Forum*; but barely by way of *Diſcipline* and in order to their *Amendment*; leſt by their tricks they become troubleſome to others, or get ill habits themſelves. So alſo the doings of *Franticks*, *Crackbrains* and *Dotards* are not accounted *Human Actions*, nor *imputable* to thoſe who contracted ſuch incapacitating Diſeaſe, without any fault of their own.

XXVI. *The ninth Concluſion.*

LASTLY, A man is not chargeable with what he ſeems to do in his *Dreams*; unleſs by *indulging himſelf* in the *day time* with ſuch Thoughts, he has deeply impreſs'd the *Ideas* of ſuch things in his mind; (though matters of this ſort can rarely be within the cognizance of the Human *Forum*.) Otherwiſe the Phanſie in ſleep is like a Boat adrift without a Guide, ſo that 'tis impoſſible for any man to order what Ideas it ſhall form.

XXVII. *Imputation of anothers Actions.*

BUT concerning the *Imputation* of *another* mans Actions it is ſomewhat more diſtinctly to be obſerved, that ſometimes it may ſo happen, that an Action ought not at all to be charged upon him that *immediately* did it, but upon another who made uſe of this only as an *Inſtrument*. But it is more frequent, that it ſhould

be imputed *both* to *him* who perpetrated the thing, and to the *other*, who by doing or omitting ſomething ſhew'd his concurrence to the Action. And this is chiefly done after a threefold manner; either, 1. As the other was the *principal* Cauſe of the Action, and this *leſs principal*, or, 2. As they were both *equally* concern'd; or, 3. As the other was *leſs principal*, and he that did the act was *principal*. To the firſt ſort belong thoſe who ſhall inſtigate another to any thing by their Authority; thoſe who ſhall give their neceſſary *Approbation*, without which the other could not have acted; thoſe who *could* and *ought* to have hindred it, but did not. To the ſecond Claſs appertain, thoſe who *order* ſuch a thing to be done or *hire* a man to do it; thoſe who *aſſiſt*; thoſe who afford *harbour* and *protection*; thoſe who had it in their *Power*, and whoſe *Duty* it was to have ſuccour-ed the wronged perſon, but refuſed it. To the third ſort are referred ſuch as are of *counſel* to the Deſign; thoſe that *encourage* and *commend* the Fact before it be done; and ſuch as *incite* men to ſinning by their *Example*, and the like.

CHAP.

Chap. II.

Of the Rule of Human Actions, or of Laws in general.

I. *The neceſſity of a Rule.*

BECAUSE all *Human Actions* depend upon the *Will*, and have their eſtimate according to the concurrence thereof; but the *Wills* of *ſingle* men are not always the *ſame*, and thoſe of other men run *divers* ways; therefore to preſerve Decency and Order among Mankind, it was neceſſary there ſhould be ſome *Rule*, by which they ſhould be regulated. For otherwiſe, if where there is ſo great a *Liberty* of the *Will*, and ſuch *variety* of *Inclinations* and *Deſires*, any man might do whatſoever he had a mind to, without any regard to ſome *ſtated Rule*, it could not but give occaſion to vaſt *Confuſions* among Mankind.

II. *Law.*

THIS Rule is called Law; which is a Decree by which the Superior obliges one that is ſubject to him, to accommodate his Actions to the directions preſcribed therein.

THAT

III. *Obligation.* THAT this Definition may the better be underſtood, it muſt firſt be enquired, What is an *Obligation? whence* is its Original? *who* is capable of *lying under* an Obligation? and *who* it is that can *impoſe* it? *Obligation* then is uſually ſaid to be that rightful Bond, by which a man is neceſſitated to do ſomewhat. That is, hereby a *Bridle*, as it were is put upon our *Liberty*; ſo that though the *Will* does actually drive *another* way, yet we find our ſelves hereby ſtruck as it were with an *internal* Senſe, that if our Action be not perform'd according to the *preſcript Rule* we cannot but confeſs we have not done *right*; and if any miſchief happen to us upon that account, we may fairly charge *our ſelves* with the ſame; becauſe it might have been avoided, if the *Rule* had been follow'd as it ought.

IV. *Man ſubject to Obligation.* AND there are two reaſons why *Man* ſhould be ſubject to an *Obligation*; one is, becauſe he is endow'd with a *Will*, which may be divers ways *directed*, and ſo be *conform'd* to a Rule; the other, becauſe *Man* is not exempt from the power of a *Superior*. For where the *Faculties* of any Agent are by *Nature* form'd only for *one way* of acting, there 'tis to no purpoſe

purpoſe to expect any thing to be done of choice: and to ſuch a Creature 'tis *in vain* to preſcribe any *Rule*; becauſe 'tis uncapable of *underſtanding* the ſame or *conforming* its actions thereto. Now if there be any one who has no *Superior*, then there is no power that can of right impoſe a Neceſſity upon him; and if he perpetually obſerves a certain Rule in what he does, and conſtantly abſtains from doing many things, he is not to be underſtood to act thus from any *Obligation* that lay upon *him*, but from his own *good pleaſure*. It will follow then, that *He* ſhould be capable of Obligation, who has a *Superior*, and is able to *underſtand* the Rule preſcribed, and is endued with a *Will* which may be *directed* ſeveral ways; and yet which (when the Law is promulg'd by his Superior) knows he cannot rightly depart therefrom. And with all theſe *Faculties* 'tis plain Mankind is furniſh'd.

V. *Who can oblige.*

AN *Obligation* is ſuperinduc'd upon the Wills of Men properly by a *Superior*, that is, not only by ſuch a one as being *greater* or *ſtronger*, can puniſh Gainſayers; but by him who has *juſt reaſons* to have a power to reſtrain the Liberty of our Will at his own pleaſure. Now when any

any man has either of theſe, as ſoon as he has ſignified what he would have, it neceſſarily ſtirs up in the mind of the party concern'd *Fear* mixt with *Reverence*; towards the firſt in contemplation of his *Power*; and toward the ſecond for the ſake of thoſe *other Reaſons*, which even without *Fear*, ought to allure any man to a compliance with his Will. For he that can give me no *other reaſon* for putting me under an Obligation againſt my Will, beſide this, that he's too *ſtrong* for me, he truly may ſo terrifie me, that I may think it better to *obey* him for a while than ſuffer a *greater Evil*; but when this *Fear* is over, nothing any longer hinders, but that I may act after my *own choice* and not *his*. On the contrary he that has nothing but *Arguments* to prove that I ſhould obey him, but wants *Power* to do me any Miſchief, if I deny. I may with Impunity ſlight his commands, except one more potent take upon him to make good his deſpiſed Authority. Now the *Reaſons* upon which one man may *juſtly* exact *Subjection* from another, are; If he have been to the other the *Original* of ſome extraordinary *Good*; and if it be plain, that he deſigns the

the others *Welfare*, and is *able* to provide better for him than 'tis poſſible for *himſelf* to do; and on the ſame account does actually lay *claim* to the Government of him: and laſtly if any one does *voluntarily* ſurrender his Liberty to another, and ſubject *himſelf* to his Direction.

VI. *The Legiſlator and the true meaning of the Law to be known.*

FURTHERMORE, that a Law may exert its force in the minds of thoſe to whom it is promulg'd, it is required, that both the *Legiſlator and the Law alſo be known:* For no man can pay obedience, if he know not *whom* he is to *obey*, and *what* he is to *perform*. Now the knowledge of the *Legiſlator* is very eaſie; becauſe from the light of Reaſon 'tis certain the ſame muſt be the *Author* of all the *Laws* of *Nature*, who was the *Creator* of the *Univerſe*: Nor can any man in *Civil Society* be ignorant *who* it is that has power over him. Then for the *Laws* of *Nature*, it ſhall be hereafter declared how we come to the knowledge of them. And as to the *Laws* of a mans *Country* or *City*, the Subject has notice given of them by a *Publication* plainly and openly made. In which theſe two things ought to be aſcertain'd, that the *Author* of the Law is he, who hath the *ſupreme Authority* in

in the Community, and that this or that is the true meaning of the *Law*. The firſt of theſe is known, if he ſhall promulge the Law with his *own Mouth*, or deliver it under his *own Hand*; or elſe if the ſame be done by ſuch as are *delegated* to that purpoſe by him: whoſe Authority 'tis in vain to call in queſtion, if it be manifeſt, that ſuch their acting belongs to that *Office* they bear in the Publick, and that they are *regularly plac'd* in the Adminiſtration thereof; if theſe Laws are to be put *judicially* in Execution, and if they contain nothing *derogatory* to the *Sovereign Power*. That the latter, that is, the true *Senſe* of the *Law* be known, it is the Duty of thoſe who promulge it, in ſo doing to uſe the greateſt *Perſpicuity* and *Plainneſs*; and if any thing *obſcure* do occur therein, an *Explanation* is to be ſought of the *Legiſlator*, or of thoſe who are *publickly conſtituted* to give judgment according to Law.

Two parts of a perfect Law.

VII. OF every *perfect Law* there are two parts: One, whereby it is directed *what* is to be *done* or *omitted*: the other, wherein is declared what *puniſhment* he ſhall incur, who *neglects* to do what is commanded, or *attempts* that which is prohibited.

prohibited. For as, through the Pravity of Human Nature ever inclining to things forbidden, it is to no purpoſe to ſay, *Do this*, if no Puniſhment ſhall be undergone by him who diſobeys; ſo it were *abſurd* to ſay, *You ſhall be puniſh'd*, except ſome reaſon preceded, by which a Puniſhment was deſerv'd. Thus then all the force of a Law conſiſts in ſignifying what the *Superior requires* or *forbids* to be done, and what *Puniſhment* ſhall be inflicted upon the Violators. But the power of *obliging*, that is, of impoſing an intrinſick Neceſſity; and the power of *forcing*, or by the propoſal of Puniſhments compelling the Obſervation of Laws, is properly in the Legiſlator, and in him to whom the Guardianſhip and Execution of the Laws is committed.

VIII. *Other Eſſentials.*

WHATSOEVER is enjoyn'd by any Law ought not only to be in the *power* of him to perform on whom the Injunction is laid, but it ought to contain ſomewhat *advantageous* either to him or others. For as it would be *abſurd* and *cruel* to exact the doing of any thing from another, under a Penalty, which it is and always was beyond his *power* to perform; ſo it would be ſilly and to *no purpoſe*

purpoſe to put a reſtraint upon the natural Liberty of the Will of any man, if no one ſhall receive any benefit therefrom.

IX. *Power of Diſpenſing.*

BUT though a Law does ſtrictly include *all* the *Subjects* of the Legiſlator who are *concern'd* in the matter of the ſame, and whom the ſaid Legiſlator at firſt *intended not* to be exempted; yet ſometimes it happens that particular perſons may be clear'd of any obligation to ſuch Law: and this is call'd *Diſpenſing.* But as he *only* may diſpenſe in whoſe power it is to *make* and *abrogate* the Law; ſo great care is to be taken, leſt by too frequent Diſpenſations and ſuch as are granted without very weighty reaſons, the Authority of the Law be ſhaken and occaſion be given of Envy and Animoſities among Subjects.

X. *Equity.*

YET there is a great difference between *Equity* and *Diſpenſing: Equity* being a *Correction* of that in which the Law, by reaſon of its *General Comprehenſion* was deficient; or an apt *Interpretation* of the Law, by which it is demonſtrated, that there may be ſome peculiar Caſe which is not comprized in the *Univerſal Law,* becauſe if it were, ſome Abſurdity would follow. For it being impoſſible

impoſſible that *all Caſes*, by reaſon of their infinite *Variety*, ſhould be either foreſeen or explicitely provided for; therefore the *Judges*, whoſe office it is to apply the *general* Rules of the Laws to *ſpecial* Caſes, ought to except ſuch from the Influence of them, as the *Lawgiver himſelf* would have excepted, if he were *preſent*, or had *foreſeen* ſuch Caſes.

XI. *Actions allowable; good and bad.*

NOW the Actions of men obtain certain Qualities and Denominations from their relation to and agreement with the Law of Morality. And all thoſe Actions, concerning which the Law has determin'd nothing on either ſide, are call'd *allowable* or *permitted*. Altho ſometimes in ordinary Law-Caſes, where all matters cannot be examin'd with the greateſt accuracy, thoſe things are ſaid to be *allowable*, upon which the Law has not aſſign'd ſome *Puniſhment*, though they are in themſelves repugnant to *Natural Honeſty*. And then thoſe Actions which are conſonant to the Law are *good*, thoſe that are contrary to it are call'd *bad*: But that any Action ſhould be *good*, 'tis requiſite, that it be exactly agreeable in every point to the Law; whereas it may be *evil*, if it be deficient in one point only.

XII. *Justice of Persons.* As for *Justice* it is sometimes the Attribute of *Actions*, sometimes of *Persons*. When it is attributed to *Persons*, 'tis usually defin'd to be, A constant and perpetual *desire* of giving every one their own. For he is call'd a *just* man, who is delighted in doing righteous things, who studies Justice, and in all his Actions endeavours to do that which is right. On the other side, the *unjust* man is he that neglects the giving every man his own, or, if he does, 'tis not because 'tis due, but from expectation of Advantage to himself. So that a *just man* may sometimes do unjust things, and an *unjust man* that which is just. But the *just* does that which is right, because he is so *commanded* by the Law; and acts the contrary only through *Infirmity*; whereas the *wicked* man does a just thing for fear of the *Punishment* which is the Sanction of the Command, but he acts wrongfully from the *naughtiness* of his *heart*.

XIII. *Of Actions.* But when Justice is attributed to *Actions*, then it is nothing else but a right application of the same to the Person. And a just Action done of choice, or knowingly and wittingly, is applied to the person to whom it is due. So that the

Justice

Juſtice of Actions differs from *Goodneſs* chiefly in this, that the latter ſimply denotes an agreement with the Law, whereas Juſtice alſo includes the regard they have to thoſe perſons upon whom they are exerciſed. Upon which account Juſtice is called a *Relative Virtue.*

XIV. *Diviſion of Juſtice.*

MEN do not generally agree about the Diviſion of *Juſtice.* The moſt receiv'd Diſtinction is, into *Univerſal* and *Particular.* The firſt is, when *every Duty* is practiſed and *all right* done to others, even that which could not have been extorted by force, or by the rigor of Law. The latter is, when *that Juſtice* only is done a man, which in his own right he could have *demanded*; and this is wont to be again divided into *Diſtributive* and *Commutative.* The *Diſtributive* takes place in Contracts made between a Society and its Members concerning fair partition of Loſs and Gain according to a rate. The *Commutative* is moſtly in Bargains made upon even hand about things and doings relating to Traffick and Dealing.

XV. *Injuſtice what.*

KNOWING thus, what *Juſtice* is, 'tis eaſie to collect what is *Injuſtice.* Where it is to be obſerv'd, that ſuch an unjuſt Action is called *Wrong-doing*, which

is premeditately undertaken, and by which a violence is done upon ſomewhat which of abſolute right was another mans due, or which by like right he one way or other ſtood poſſeſs'd of. And this Wrong may be done after a threefold manner, 1. if that be denied to another which in his own right he might demand (not accounting that which from Courteſie or the like Virtue may be anothers due); or 2. if that be taken away from another, of which by the ſame right then valid againſt the Invader, he was in full poſſeſſion: or 3. if any damage be done to another, which we had not authority to do to him. Beſide which, that a man may be charg'd with *Injuſtice*, it is requiſite that there be a naughty *mind* and an evil *deſign* in him that acts it. For if there be nothing of theſe in it, then 'tis only call'd *Misfortune* or a *Fault*, and that is ſo much ſlighter or more grievous, as the Sloth and Negligence which occaſion'd it was greater or leſs.

XVI. *Laws diſtinguiſht.*

LAWS with reſpect to their Authors are diſtinguiſh'd into *Divine* and *Humane*; that proceeds from *God*, and this from *Men*. But if Laws be conſidered, as they have a neceſſary and univerſal Congruity with

with Mankind, they are then diſtinguiſht into *Natural* and *Poſitive*. The former is that which is ſo agreeable with the *rational* and ſociable Nature of Man, that *honeſt* and *peaceable Society* could not be kept up amongſt Mankind without it. Hence it is, that *this* may be ſought out and the knowledge of it acquir'd by the light of that *Reaſon*, which is born with every man, and by a conſideration of *Human Nature* in general. The *latter* is that which takes not its riſe from the common condition of *Human Nature*, but only from the good pleaſure of the *Legiſlator*; not that this ought to be without its reaſon, but ſhould carry with it advantage to thoſe men or that Society, for which it is deſign'd. Now the Law *Divine* is either *Natural* or *Poſitive*; but all *Human Laws*, ſtrictly taken, are *Poſitive*.

CHAP. III.

Of the Law of Nature.

I. *Law Natural obvious.*

THAT man who has throughly examin'd the *Nature* and *Diſpoſition* of Mankind, may plainly underſtand what the *Law Natural* is, the *Neceſſity* thereof,

and which are the *Precepts* it propoſes and enjoyns to us Mortals. For as it much conduces to him who would know exactly the *Polity* of any *Community*, that he firſt well underſtand the *condition* thereof, and the *manners* and *humours* of the Members who conſtitute it: So to him who has well ſtudied the common *Nature* and *Condition* of *Men*, it will be eaſie to find by what *Laws* the univerſal Safety muſt be preſerv'd.

II. *Self-Preſervation.* THIS then Man has in common with all other *Animals*, who have a Senſe of their own Beings; that he accounts nothing dearer than *Himſelf*; that he ſtudies all manner of ways *his own Preſervation*; and that he endeavonrs to *procure* to himſelf ſuch things as ſeem *good* for him, and to *avoid* and *keep off* thoſe that are *miſchievous*. And this deſire of *Self-Preſervation* regularly is ſo ſtrong, that all our other *Appetites* and *Paſſions* give way to it. So that whenſoever an *Attempt* is made upon the Life of any man, though he eſcape the danger threatned, yet he uſually reſents it ſo, as to retain a *Hatred* ſtill and a deſire of *Revenge* on the Aggreſſor.

III. *Society abſolutely neceſſary.* BUT in one particular *Man* ſeems to be ſet in a *worſe* condition than that of *Brutes*

Brutes, that hardly any other Animal comes into the world in ſo great *Weakneſs*; ſo that 'twould be a kind of miracle, if any man ſhould arrive at a mature Age, without the aid of ſome body elſe. For even now after ſo many helps found out for the *Neceſſities* of *Human Life*; yet a many Years *careful Study* is requir'd before a man ſhall be able of himſelf to get *Food* and *Raiment*. Let us ſuppoſe a man come to his full ſtrength without any *over-ſight* or *inſtruction* from *other* men; ſuppoſe him to have no manner of *knowledge* but what ſprings of itſelf from his *own natural wit*; and thus to be plac'd in ſome *Solitude* deſtitute of any *Help* or *Society* of all Mankind beſide. Certainly a more miſerable Creature cannot be imagin'd. He is no better than *dumb*, *naked*, and has nothing left him but *herbs* and *roots* to pluck, and the *wild fruits* to gather; to quench his thirſt at the next *Spring*, *River* or *Ditch*; and, to ſhelter himſelf from the injuries of the weather, by creeping into ſome *Cave*, or covering himſelf after any ſort with *Moſs* or *Graſs*; to paſs away his tedious life in *Idleneſs*; to ſtart at every Noiſe, and be afraid at the ſight of any *other* Animal; in a word,

at laſt to periſh either by *Hunger* or *Cold* or ſome wild *Beaſt*. It muſt then follow, that whatſoever Advantages accompany Human Life, are all owing to that *mutual help* men afford one another. So that next to *Divine Providence*, there is nothing in the world more *beneficial* to Mankind than *Men themſelves*.

IV. *Man to Man inclinable to do hurt.*

AND yet, as *uſeful* as this Creature is or may be to others of its kind, it has many faults, and is capable of being *equally noxious*; which renders mutual Society between man and man not a little dangerous, and makes *great caution* neceſſary to be uſed therein, leſt *Miſchief* accrew from it inſtead of *Good*. In the firſt place, a ſtronger *Proclivity* to injure another is obſerv'd to be generally in *Man*, than in any of the *Brutes*; for they ſeldom grow outragious, but through *Hunger* or *Luſt*, both which Appetites are ſatisfied without much pains; and that done, they are not apt to grow furious or to hurt their Fellow-Creatures without ſome *Provocation*. Whereas Man is an Animal always *prone* to *Luſt*, by which he is much more frequently inſtigated than ſeems to be neceſſary to the Conſervation of his Kind. His *Stomach* alſo is not only to be *ſatisfied*, but to be *pleaſed*;

ed; and it often deſires more than Nature can well digeſt. As for *Raiment*, Nature has taken care of the *reſt* of the Creatures that they don't *want* any: but *Men* require not only ſuch as will anſwer their *Neceſſity*, but their *Pride* and *Oſtentation*. Beſide theſe, there are many *Paſſions* and *Appetites* unknown to the *Brutes*, which yet are to be found in *Mankind*; as an unreaſonable *Deſire* of poſſeſſing much *more* than is *neceſſary*, an earneſt purſuit after *Glory* and *Preeminence*; *Envy*, *Emulation*, and *Outvyings* of Wit. A proof hereof is, that moſt of the Wars with which *Mankind* is harraſs'd, are raiſed for cauſes altogether unknown to the *Brutes*, Now all theſe are able to provoke *men* to hurt one another, and they frequently do ſo. Hereto may be added the great *Arrogance* that is in many men, and *Deſire* of *inſulting* over others, which cannot but exaſperate even thoſe who are naturally meek enough, and from a care of preſerving themſelves and their Liberty, excite them to make reſiſtance. Sometimes alſo *Want* ſets men together by the ears, or becauſe that Store of neceſſaries which they have at preſent ſeems not *ſufficient* either for their *Needs* or *Appetites*.

MORE-

V. *And very capable.* MOREOVER, Men are more *able* to do one another harm than *Brutes* are. For tho they don't look formidable with *Teeth, Claws* or *Horns*, as many of *them* do; yet the *Activity* of their *Hands* renders them very effectual Inſtruments of Miſchief; and then the quickneſs of their *Wit* gives them *Craft* and a Capacity of attempting that by Treachery which cannot be done by open force. So that 'tis very *eaſie* for one Man to bring upon another the *greateſt* of all *Natural Evils*, to wit, *Death* it ſelf.

VI. *And likely ſo to do.* BESIDE all this, it is to be conſidered that among *Men* there is a vaſt *diverſity* of *Diſpoſitions*, which is not to be found among *Brutes*; for of *them* all of the ſame kind have the *like Inclinations*, and are led by the *ſame* inward *motions* and *appetites*: Whereas among *Men*, there are ſo many *Minds* as there are *Heads*, and every one has his *ſingular* opinion; nor are they all acted with *ſimple* and *uniform* Deſires, but with ſuch as are *manifold* and *variouſly mixt* together. Nay, *one*, and the *ſame* man ſhall be often ſeen to *differ* from *himſelf*, and to *deſire* that at *one* time which at *another* he extremely *abhorred*. Nor is the Variety leſs diſcernable,

able, which is now to be found in the almoſt *infinite ways* of living, of managing our Studies, our courſe of Life, and our methods of making uſe of our Wits. Now, that by occaſion hereof Men may not daſh againſt one another, there is need of wiſe *Limitations* and careful *Management.*

VII. *The Sum of the foregoing Paragraphs.*

So then Man is an Animal very deſirous of his own *Preſervation*; of *himſelf* liable to many *wants*; *unable* to ſupport himſelf without the help of *other* of his kind; and yet wonderfully fit in *Society* to promote a *common Good*; but then he is *malitious*, *inſolent* and eaſily *provok'd*, and not leſs *prone* to do miſchief to his fellow than he is *capable* of effecting it. Whence this muſt be inferred, that in order to his Preſervation, 'tis abſolutely neceſſary, that he be *ſociable*, that is, that he *joyn* with thoſe of his kind, and that he ſo *behave* himſelf towards them, that they may have no juſtifiable cauſe to do him *Harm*, but rather to *promote* and *ſecure* to him all his Intereſts.

VIII. *Law Natural defin'd.*

THE Rules then of this Fellowſhip, which are the Laws of *Human Society*, whereby men are directed how to render themſelves uſeful Members thereof, and without

without which it falls to pieces, are called the *Laws of Nature.*

IX. *The Means design'd where the End is so.*

FROM what has been said it appears, that this is a *fundamental Law of Nature,* That every man ought, as much as in him lies, to preserve and promote *Society,* that is, the *Welfare of Mankind.* And, since he that designs the *End,* cannot but be supposed to design those *Means* without which the *End* cannot be obtain'd, it follows that all such Actions as tend generally and are absolutely necessary to the preservation of this *Society,* are *commanded* by the Law of Nature; as on the contrary those that disturb and dissolve it are forbidden by the same. All other Precepts are to be accounted only *Subsumptions,* or *Consequences* upon this Universal Law, the Evidence whereof is made out by that Natural Light which is engrafted in Mankind.

X. *A God and Providence.*

NOW though these *Rules* do plainly contain that which is for the general *Good;* yet that the same may obtain the force of *Laws,* it must necessarily be presupposed, that there is a *God,* who governs all things by his Providence, and that He has enjoyned us Mortals, to observe these *Dictates* of our Reason as Laws, promulg'd by

by him to us by the powerful Mediation of that Light which is born with us. Otherwiſe we might perhaps pay ſome obedience to them in contemplation of their *Utility*, ſo as we obſerve the Directions of Phyſicians in regard to our Health, but not as *Laws*, to the Conſtitution of which a *Superior* is neceſſary to be ſuppoſed, and that ſuch a one as has actually undertaken the Government of the other.

XI. *The ſame farther demonſtrated.*

BUT that God is the Author of the *Law of Nature*, is thus demonſtrated (conſidering Mankind only in its *preſent* State, without enquiring whether the *firſt* Condition of us Mortals were *different* from this, nor *how* the Change was wrought.) Whereas our Nature is ſo framed, that Mankind cannot be preſerv'd without a *ſociable Life*, and whereas it is plain that the *Mind of Man* is capable of all thoſe Notions, which are *ſubſervient* to this purpoſe; and it is alſo manifeſt, that Men not only, like the other Creatures, owe their *Original* to God, but that He *governs* them, let their Condition be as it will, by the wiſdom of his *Providence*. Hence it follows, that it muſt be ſuppoſed to be the *Will of God*, that Man ſhould make uſe of thoſe Faculties with which he is peculiarly

peculiarly endow'd beyond the Brutes, to the *preſervation* of his own Nature; and conſequently, that the Life of man ſhould be different from the lawleſs Life of the *Irrational Creatures.* And ſince this cannot otherwiſe be atchiev'd but by an Obſervance of the *Law Natural,* it muſt be underſtood that there is from God an obligation laid upon Man to pay obedience hereto, as a Means not *invented* by the Wit or *impoſed* by the Will of Men, nor capable of being *chang'd* by their Humours and Inclinations; but *expreſly* ordain'd by God himſelf in order to the *accompliſhing* this *End.* For he that obliges us to perſue ſuch an *End,* muſt be thought to oblige us to make uſe of thoſe *Means* which are neceſſary to the attainment thereof. And that the *Social Life* is poſitively enjoyn'd by God upon *Men,* this is a Proof, that in no other *Animal* is to be found any Senſe of *Religion* or Fear of a *Deity,* which ſeems not ſo much as to fall within the Underſtanding of the ungovernable Brute; and yet it has the power to excite in the minds of *Men,* not altogether profligate, the tendereſt Senſe; by which they are convinc'd that by ſinning againſt this *Law Natural,* they offend him

him who is Lord of the Soul of Man, and who is to be fear'd, even where we are ſecure of any Puniſhment from our Fellow-Creatures.

XII. *This Law how written in Man's Heart.*

THOUGH it be uſually ſaid, that we have the knowledge of this Law from *Nature* itſelf, yet this is not ſo to be taken, as if there were implanted in the Minds of men juſt *new-born* plain and diſtinct Notions concerning what is to be *done* or *avoided*. But Nature is ſaid thus to teach us, partly becauſe the knowledge of this Law may be attain'd by the help of the *Light* of *Reaſon*; and partly becauſe the general and moſt uſeful points thereof are ſo *plain* and *clear*, that they at firſt ſight force the Aſſent, and get ſuch root in the minds of men, that nothing can eradicate them afterwards; let wicked men take never ſo much pains to blunt the edge and ſtupifie themſelves againſt the Stings of their *Conſciences*. And in this Senſe we find in Holy Scripture, that this Law is ſaid to be *written in the hearts of men*. So that having from our Childhood had a ſenſe hereof inſtill'd into us together with other Learning in the uſual Methods of Education, and yet not being able to remember the *punctual time* when firſt they took

took hold of our Underſtandings and poſſeſſed our Minds; we can have no other opinion of our knowledge of this Law; but that it was *connate* to our Beings, or born *together* and at the *ſame time* with our ſelves. The Caſe being the ſame with every man in learning his *Mother-Tongue.*

XIII. *Diviſion of Natural Duties.*

THOSE *Duties* which from the Law of Nature are incumbent upon Man ſeem moſt aptly to be *divided* according to the *Objects* about which they are converſant. With regard to which they are ranged under three principal heads; the *firſt* of which gives us directions how by the ſingle dictates of right Reaſon Man ought to behave himſelf towards *God*; the *ſecond* contains our Duty towards *our ſelves*; and the *third* that towards *other men.* But though thoſe Precepts of the Law Natural which have a relation to *other* men may primarily and directly be derived from that *Sociality*, which we have laid down as a Foundation; yet even the Duties of Man towards *God* may be indirectly deduced from thence, upon this account that the ſtrongeſt obligation to mutual Duties between man and man ariſes from *Religion* and

and a fear of the *Deity*; ſo as that Man could not become a *ſociable* Creature if he were not imbued with *Religion*; and becauſe *Reaſon* alone can go no farther in *Religion* than as it is uſeful to promote the common Tranquillity and Sociality or reciprocal Union in this Life: For ſo far forth as Religion procures the Salvation of Souls, it proceeds from peculiar Divine Revelation. But the Duties a man owes to *Himſelf* ariſe jointly from *Religion* and from the Neceſſity of *Society*. So that no man is ſo Lord of himſelf, but that there are many things relating to *himſelf*, which are not to be diſpoſed altogether according to his Will; partly becauſe of the obligation he lies under of being a religious Adorer of the Deity, and partly that he may keep himſelf a uſeful and beneficial Member of *Society*.

CHAP.

Chap. IV.

Of the Duty of Man towards God, or, concerning Natural Religion.

I. *Natural Religion, its parts.*

The Duty of Man towards God, ſo far as can be diſcovered by Natural Reaſon, is comprehended in theſe two; that we have true Notions concerning him, or *know* him aright; and then that we conform our Actions to his Will, or *obey* him as we ought. And hence Natural Religion conſiſts of two ſorts of Propoſitions, to wit, *Theoretical* or Speculative, and *Practical* or Active.

II. *That God is.*

Amongst thoſe *Notions* that every man ought to have of God, the *firſt* of all is, that he firmly believe his *Exiſtence*, that is, that there *is* indeed ſome *ſupreme* and *firſt Being*, upon whom this Univerſe depends. And this has been moſt plainly demonſtrated by learned and wiſe men, from the *Subordination* of *Cauſes* to one another, which muſt at laſt be found to have their Original in ſomewhat that was before them all; from the nature of *Motion*; from the conſideration of this great

great *Machin*, the World, and from the like Arguments. Which if any man denies himſelf to be able to *comprehend*, he is not therefore to be excuſed for his Atheiſm. For all Mankind having been perpetually, as it were, poſſeſſed of this perſuaſion, that man who undertakes to oppoſe it, ought not only ſolidly to *confute* all thoſe Arguments that are brought to *prove* a God, but ſhould advance *Reaſons* for his own Aſſertion which may be *more plauſible* than thoſe. And ſince by this Belief of the *Deity* the Weal of Mankind may be ſuppoſed to have been *hitherto* preſerved, he ought ro ſhew that Atheiſm would *better* anſwer that end than ſober Religion and the Worſhip of God. Now ſeeing this can by no means be done, the Wickedneſs of thoſe men who attempt any way to eradicate this Perſuaſion out of the minds of men, is to be above all things abominated, and reſtrained by the ſevereſt Puniſhments.

III. *God the Creator of the World.*

THE Second is, that *God is the Creator of this Univerſe.* For it being manifeſt from Reaſon, that none of theſe things could exiſt of *themſelves*, it is abſolutely neceſſary that they ſhould

have ſome ſupreme *Cauſe*; which *Cauſe* is the very ſame that we call GOD. And hence it follows, that thoſe men are cheated, who every now and then are putting upon us *Nature*, forſooth, as the original Cauſe of all Things and Effects. For, if by that Word they mean that *Energy* and *power of acting* which we find in every thing, this is ſo far from being of any force to prove there is *no God*, that it proves Him to be the *Author* of *it ſelf*. But if by *Nature* they would have us underſtand the *Supreme Cauſe* of all things, this is only out of a profane Nicety to avoid the receiv'd and plain appellation of GOD. Thoſe alſo are in a great Error, who believe that any thing can be GOD, which is the Object of our *Senſes*, and particularly the *Stars*, among the reſt. For the *Subſtance* of theſe argues them all to derive their beings from ſomewhat elſe, and not to be the *firſt* things in nature. Nor do they think leſs unworthily of *God* who call him the *Soul of the World*. For the Soul of the World, let them conceive of it as they pleaſe, muſt ſignifie a *Part* of the World; and how can a *Part* of a thing be the *Cauſe* of it, that

is,

is, be ſomething *before* itſelf. But if by the *Soul* of the World, they mean that *firſt* and *inviſible Being*, from which all things receive their Vigour, Life and Motion, they only obtrude upon us an obſcure and figurative Word for one that is plain and obvious. From hence alſo it appears, that the *World* did not exiſt from *all Eternity*; this being contrary to the nature of that which has a *Cauſe*. And he that aſſerts that the *World is Eternal*, denies that it had any *Cauſe* of its being, and conſequently denies *God* himſelf.

IV. *God governs the World.*

THE Third is, that God *governs the whole World*, and particularly *Mankind*: Which plainly appears from the admirable and conſtant *Order* which is to be ſeen in this Univerſe; and 'tis to the ſame *moral* purpoſe whether a man deny that *God is*, or that he *rules* and *regards the affairs of Men*; ſince either of them deſtroy all manner of Religion. For let him be never ſo excellent in himſelf, 'tis in vain to fear or worſhip him, if he be altogether regardleſs of us, and neither will nor can do us either good or hurt.

V. *God infinitely perfect.*

THE Fourth is, that *no Attribute can belong to God, which implies any manner of Im-*

Imperfection. For it would be abſurd, He being the *Cauſe* and *Source* of all things, for any Creature of his to think itſelf able to form a notion of any *Perfection*, of which he is not fully poſſeſs'd. Nay, His *Perfection* infinitely ſurmounting the Capacity of ſo mean a Creature, it is moſt reaſonable to expreſs the ſame in *negative* rather than in *poſitive* terms. Hence nothing is to be attributed to God that is *finite* or *determinate*; becauſe what is *finite* has always ſomewhat that is *greater* than itſelf: and whatſoever is *determinate* or ſubject to *Figure* and *Form*, muſt ſuppoſe *Bounds* and *Circumſcription.* Neither can He be ſaid to be *diſtinctly* and *fully comprehended* or conceived in our Imagination, or by any Faculty of our Souls; becauſe whatſoever we can comprehend fully and diſtinctly in our Minds, muſt be *Finite.* And yet when we pronounce God to be *Infinite*, we are not to think we have a full *Notion* of Him, for by the word *Infinite* we denote nothing in the Thing itſelf, but only declare the Impotence of our Underſtandings, and we do, as it were, ſay, that we are not able to comprehend the Greatneſs of his Eſſence.

Hence

Hence alſo it is, that we cannot rightly ſay of God that he has any *Parts*, as neither that *He* is *All* any thing; for theſe are Attributes of things *finite*; nor that he is contained in any *Place*, for that denotes limits and bounds; nor that he *moves* or *reſts*, for both thoſe ſuppoſe him to be in a place: So neither can any thing be properly attributed to God which intimates *Grief* or any *Paſſion*, ſuch as *Anger*, *Repentance*, *Mercy*. I ſay *properly*; becauſe when we find ſuch things ſaid of Him, they are to be ſuppoſed to have their ſignification from the *Effect* and not from any *Emotion* in the Mind of the Deity, the Expreſſion being only conform'd to *Humane Paſſions* and *Capacities*. Nor may we ſay of Him ought that denotes the *Want* or Abſence of any Good, as *Appetite*, *Hope*, *Concupiſcence*, *Deſire* of any thing; for theſe imply *Indigence* and conſequently *Imperfection*, it not being ſuppoſable that one ſhould deſire, hope or crave any thing of which he does not ſtand in ſome need. And ſo when *Underſtanding*, *Will*, *Knowledge*, and Acts of the *Senſes*, as Seeing, Hearing, *&c.* are attributed to God, they are to be taken in a much more ſublime

ſenſe, than we conceive them in our ſelves. For the *Will* is a *rational Deſire*; but *Deſire*, as is ſaid afore, preſuppoſes the *Want* or *Abſence* of ſomething that is agreeable and neceſſary. And *Underſtanding* and *Senſe* implies ſome Operation upon the Faculties of a Man, wrought by exterior Objects upon the Organs of his Body and the Powers of his Soul; which being ſigns of a Power *depending* upon ſome other thing, demonſtrate it not to be *moſt perfect*.

V. *God but One.*

LASTLY, it is utterly repugnant to the Divine Perfection, to ſay there are *more Gods* than *one*; for, beſide that the admirable Harmony of the World argues it to have but *one* Governour, then God muſt be *finite*, if there were more Gods of equal Power with himſelf and not depending upon Him; and it involves a Contradiction to ſay, There are *many Infinites*. Upon the whole then, 'tis moſt agreeable to Reaſon, when we attempt to expreſs the Attributes of God, either to make uſe of words of a *Negative* ſignification, as, Infinite, Incomprehenſible, Immenſe, Eternal, *i. e.* which had no beginning nor ſhall have end; or *Superlative*, as moſt Excellent, moſt Powerful, moſt Mighty, moſt

moſt Wiſe, *&c.* or *Indefinite*, as Good, Juſt, Creator, King, Lord, *&c.* and this in ſuch a ſenſe as we would not think our ſelves to expreſs *What* he is; but only in ſome ſort to declare our *Admiration* of Him, and profeſs our *Obedience* to Him, which is a token of an humble Soul and of a Mind paying all the Veneration it is capable of.

VI. *Internal Worſhip of God.*

THE Propoſitions of *Practical* Natural Religion are partly ſuch as concern the *Internal*, and partly the *External Worſhip of God.* The *Internal* Worſhip of God conſiſts in *honouring* Him. Now *Honour* is a high Opinion of anothers *Power* conjoin'd with *Goodneſs*: And the Mind of Man is obliged from a conſideration of this his Power and Goodneſs to fill itſelf with all that Reverence towards him of which its Nature is ſuſceptible. Hence it is, that it is our Duty to *love* him as the Author and Beſtower of all manner of good; to *hope* in him, as from whom only all our Happineſs for the future does depend; to *acquieſce* in his Will, he doing all things for the beſt, and giving us what is moſt expedient for us; to *fear* him, as being moſt powerful, and the offending whom lays us liable

liable to the greateſt Evil; laſtly, in all things moſt humbly to *obey* him, as our Creator, our Lord, and our Beſt and Greateſt Ruler.

VII. *External Worſhip of God.*

THE *external Worſhip* of God is chiefly ſhewn in theſe inſtances: That Man give thanks to God for ſo many good things received of him: That, ſo far as is in his power, he tranſcribe God's Will into his Actions, that is, that he *obey* his Commands: That he *admire* and *celebrate* his Greatneſs: That he pour forth his *Prayers* before him, for the procuring of Good and averting of Evil; for *Prayer* is a ſign of *Hope*, and *Hope* is an acknowledgment of the Divine Power and Goodneſs: That, if a juſt occaſion ſhall require, he call *God only* a Witneſs to his *Oath*, and that he moſt religiouſly obſerve the ſame; upon the conſideration that God is Omniſcient and Almighty: That he ſpeak not of God otherwiſe than *ſeriouſly* and *conſiderately*; for that is a Token of *Awe*, and *Awe* plainly confeſſes a *Power*: Hence it follows, that the *Name of God ought not to be uſed raſhly and in vain*; both which to do is *inconſiderate*: Nor are we to *ſwear*, *without a lawful occaſion*, for that is *in vain*: Neither

ther may we *diſpute nicely and over-familiarly concerning the Nature of God and the Methods of his Providence*; for nothing comes of this, but only ſhews that we would meaſure Him and His Workings by the Scantling of our own Reaſon. Add to theſe, that *whatſoever is done for or given to God ought to be the beſt in its kind, and fit to expreſs the Honour we have for him.* Alſo, *that we worſhip God not only in private, but openly and publickly in the ſight of men*; for to do any thing in ſecret, ſeems to hint as if we were aſhamed to act it openly, but Worſhip *publickly* paid not only gives teſtimony of our own devotion, but excites others by our example to do the like. And laſtly, we are with our utmoſt endeavour to *obſerve the Laws of Nature*; for as it is the greateſt Affront to ſlight the commands of God; ſo on the contrary, Obedience to him is more acceptable than any Sacrifice.

VIII. *Eternal Salvation not acquired by Natural Religion alone.*

AND yet, after all, it muſt be confeſt, that the Effects of this *Natural Religion*, nicely conſidered and with regard to the *preſent State* of *Mankind*, are concluded within the proſpect of *this* Life; but that it is of no avail towards procuring *eter-*

eternal Salvation. For *Humane Reason* left alone to itſelf knows not that the *Pravity* which is ſo diſcernable in our Faculties and Inclinations proceeded from Mans *own Fault*, and that hereby he becomes obnoxious to the *Wrath* of God and to eternal *Damnation*: So that with the guidance of *this* only, we are altogether ignorant of the neceſſity of a *Saviour*, and of his *Office* and *Merit*; as well as of the *Promiſes* made by God to Mankind, and of the ſeveral *other* matters thereupon depending, by which alone, it is plain from the holy Scriptures, that everlaſting Salvation is procured to mortal men.

IX. *Religion the firmeſt Bond of Society.*

It may be worth the while, yet a little more diſtinctly to conſider the Benefits which through *Religion* accrue to Mankind; from whence it may appear that *It is in truth the utmoſt and firmeſt bond of Humane Society.* For in the Natural Liberty, if you take away the *Fear* of a *Divine Power*, any man who ſhall have confidence in his own *Strength*, may do what violences he pleaſe to others who are weaker than himſelf, and will account *Honeſty*, *Modeſty* and *Truth* but as empty words; nor will he be perſuaded

ſuaded to do that which is right by any Arguments, but from a ſenſe of his own *Inability* to act the contrary. Moreover, lay aſide *Religion*, and the *Internal Bands* of Communities will be always ſlack and feeble; the Fear of a temporal *puniſhment*, the *Allegiance* ſworn to Superiors, and the *Honour* of obſerving the ſame, together with a *grateful conſideration* that by the favour of the ſupreme Government they are defended from the Miſeries attending a *State* of *Nature*; all theſe, I ſay, will be utterly inſufficient to contain unruly men within the bounds of their Duty. For in this caſe that Saying would indeed have place, *He that values not Death, can never be compell'd*; becauſe to thoſe who fear not *God* nothing can be more formidable than *Death*. He that can once bring himſelf to deſpiſe *this* may attempt what he pleaſes upon thoſe that are ſet over him; and to tempt him ſo to do, he can hardly want ſome *Cauſe* or *Pretence*; as, either to free himſelf of the uneaſineſs he ſeems to lie under by being ſubject to anothers command, or that himſelf may enjoy thoſe Advantages which belong to him that poſſeſſes the Government; eſpecially when

when he may eaſily perſuade himſelf that his enterpriſe is juſt, either becauſe He that at preſent ſits at the helm of Government is guilty of Mal-Adminiſtration, or that himſelf thinks he could manage it by many degrees to better purpoſe. An *Occaſion* too cannot long be wanting for ſuch Attempts, either from the Princes want of Circumſpection in the care of his Perſon (and indeed in ſuch a ſtate of things who ſhall guard even the Guards themſelves?) or from a powerful Conſpiracy, or, in time of foreign War, from a Defection to the Enemy. Beſide *private* men would be very prone to wrong one another; for the proceedings in *humane Courts* of Judicature being govern'd by *Proofs* of Matter of Fact, all thoſe *Wickedneſſes* and *Villanies* which could be *ſecretly* acted and without Witneſſes, if any thing were to be gained by them, would be accounted *Dexterities of Wit*, in the practice of which a man might enjoy ſome Self-ſatisfaction. Again, no man would be found that would do works of *Charity* or of *Friendſhip*, except with probable expectation of Glory or Profit. From whence it would follow, that, ſuppoſing no Puniſhment

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from above, one man not being able to place any ſolid confidence in the Troth of another, they muſt every one always live anxiouſly in a mutual *Fear* and *Jealouſie*, leſt they be cheated or harm'd each by his Neighbour. The *Governours* alſo would have as little inclination, as the *Governed*, to Actions that are *brave* and *Honourable*; for thoſe that govern, not being obliged by any tie of Conſcience, would put all Offices, and even Juſtice it ſelf to ſale; and in every thing ſeek their own *private Profit* by the Oppreſſion of their Subjects; from whom they being always fearful of a *Rebellion*, they muſt needs know there can be no ſurer means to preſerve themſelves, than by rendring them as *heartleſs* and as *weak* as poſſible. The *Subjects* alſo, on the other ſide, ſtanding in fear of the violences of their Rulers, will alway be ſeeking opportunities to *rebel* though at the ſame time they muſt be mutually diſtruſtful and fearful of each other. The ſame would be the Caſe of *married perſons*; upon any ſlight Quarrel, they would be ſuſpicious leſt one ſhould make away the other by Poiſon or ſome ſuch *clandeſtine* way; and the whole Family would be liable to the like danger. For it being plain,

plain, that without *Religion* there will be no *Conſcience*, it would not be eaſie to diſcover ſuch *ſecret Villanies*; they being ſuch as moſtly are brought to light by the inceſſant prickings of the *Conſcience*, and *internal horrors* breaking forth into outward Indications. From all which it appears, how much it is the Intereſt of Mankind, that all means be uſed to check the ſpreading of *Atheiſm* in the world; and with what *vain Folly* thoſe men are poſſeſs'd, who think to get the reputation of being notable *Politcians*, by being ſeemingly inclined to *Looſeneſs* and *Irreligion*.

CHAP. V.

Of the Duty of a Man towards Himſelf.

Man liable to Obligation to Himſelf.

I. ALTHOUGH the *Love of Himſelf* be ſo deeply fixed in the mind of Man, as to put him always under a ſolicitous care of Himſelf, and upon endeavours by all means to procure his own advantage; ſo as, upon conſideration *hereof*, it would ſeem ſuperfluous to find out *Laws* to oblige him to the ſame: yet in *other* reſpects it is neceſſary, that he be bound to the ob-

obſervation of ſome certain *Rules* touching *Himſelf*. For Man not being born for Himſelf alone, but being therefore furniſh'd with ſo many excellent *Endowments*, that he may ſet forth his *Creators* Praiſe, and be rendred a fit Member of *Humane Society*; it follows hence, that it is his *Duty*, to cultivate and improve thoſe Gifts of his Creator which he finds in himſelf, that they anſwer the end of their *Donor*; and to contribute all that lies in his power to the benefit of *Humane Society*. Thus, though true it is, that the *Ignorance* of any man is *his own* Shame and *his own* Loſs; yet we accuſe not the Maſter of Injuſtice, who chaſtiſes his Scholar for *Negligence* in not learning thoſe Sciences of which he is capable.

II. *Two parts of Man, to the Mind.*

AND ſince Man conſiſts of two parts, a *Soul* and a *Body*, whereof the firſt ſupplies the part of a *Directer*, the other that of an *Inſtrument* or ſubordinate *Miniſter*, ſo that our Actions are all performed by the Guidance of the *Mind* and by the Miniſtration of the *Body*; we are hence oblig'd to take care of *both*, but eſpecially of the *former*: And that is above all things ſo to be form'd and accommodated as to bear a fit part in the *Social Life*, and to

be imbued with a Sence and Love of *Duty* and *Decency*. Then we are to betake our ſelves to the *learning* of ſomewhat proper to our *Capacity* and our *Condition* in the world; or elſe we ſhall become a uſeleſs burden to the earth, cumberſome to our ſelves, and troubleſome to others. And after all we are in due time to make choice of ſome honeſt *State of Life*, agreeable to our natural *Inclinations*, the abilities of our *Body* and *Mind*, *Extraction*, or *Wealth*; or according as the juſt Authority of our *Parents*, the Commands of our *Superiors*, *Occaſion* or *Neceſſity* ſhall require.

III. 2. *The Body.* But the *Soul* being ſupported by and depending upon the *Body*, it is neceſſary that the ſtrength thereof be continued and confirm'd by convenient *Nouriſhment* and *Excerciſe*; and that it be not weakned by any *Intemperate* eating or drinking; nor debilitated by *unſeaſonable* and *needleſs Labours*, or otherwiſe. Upon this account *Gluttony*, *Drunkenneſs*, the immoderate uſe of *Women* and the like are to be avoided: And beſides ſince unbridled and exorbitant *Paſſions* not only give frequent occaſion to diſturb *Human Society*, but are very hurtful even to the

the perſon *himſelf*; we ought to take care with our utmoſt to quell *them* and ſubject *them* to Reaſon. And becauſe many dangers may be eſcap'd; if we encounter them with *Courage*, we are to caſt off all *effeminacy* of the Mind, and to put on *Reſolution* againſt all the terrible appearances that any Event may ſet before us.

IV. *Man not Lord of his own Life.*

AND yet becauſe no man could give *himſelf* Life, but it muſt be accounted as the bounteous Favour of *God*, it appears that Man is by no means veſted with ſuch a power over his *own* Life, as that he may put an *end* to it when he pleaſes; but he ought to tarry, till he is call'd off by Him who plac'd him in this Station. Indeed ſince Men both can and ought to be ſerviceable to one another, and ſince there are ſome ſorts of Labour or an over-ſtraining in any, which may ſo waſte the ſtrength of a man, that Old Age and Death may come on much ſooner than if he had led an eaſie and painleſs Life; there is no doubt but that a man may without any contravention to this Law, chooſe that way of living which may with ſome probability make his Life the ſhorter, that ſo he may become more

uſeful to Mankind. And whereas oftentimes the Lives of *many* will be loſt, except *ſome* number of men expoſe themſelves to a Probability of loſing their own on their behalf, in this caſe the lawful *Governour* has power to lay an Injunction on any *private* man under the moſt grievous penalties, not to decline by Flight ſuch danger of loſing his Life. Nay farther, he may of his *own accord* provoke ſuch danger, provided there are not *Reaſons more forcible* for the contrary, and by thus adventuring he hath hopes to ſave the Lives of *others*, and thoſe *others* are ſuch as are worthy ſo dear a Purchaſe. For it would be ſilly for any man to engage his Life together with another to *no purpoſe*, or for a perſon of *Value* to die for the preſervation of a *paltry Raſcal*. But for any other caſes, there ſeems nothing to be requir'd by the *Law of Nature*, by which he ſhould be perſuaded to prefer another mans Life before his own, but that all things rightly compar'd, every man is allow'd to be *moſt dear* to *himſelf*. And indeed, all thoſe who voluntarily put an end to their own Lives, either as *tir'd* with the many *Troubles* which uſually accompany this Mortal State; or from an

an *Abhorrence* of *Indignities* and *Evils*, which yet would not render them ſcandalous to *Humane Society*; or through *Fear* of *Pains* or *Torments*, by enduring which with fortitude they might become uſeful Examples to others; or out of a vain *Oſtentation* of their *Fidelity* and *Bravery*: all theſe, I ſay, are to be certainly reputed *Sinners againſt the Law of Nature.*

V. *Self-Defence.*

But whereas it often happens that this *Self-Preſervation*, which the tenderest Paſſion and exacteſt Reaſon thus recommends to Mankind, does ſeem to interfere with our Precepts concerning *Society*, then when our own Safety is brought into jeopardy by another, ſo far that either we muſt periſh or ſubmit to ſome very grievous miſchief, or elſe we muſt repel the Aggreſſor by force and by doing him harm: Therefore we are now to deliver, *With what Moderation the Defence of our ſelves is to be temper'd.* This Defence of our ſelves then will be ſuch as is, either *without any harm* to him from whom we apprehended the miſchief, by rendring any Invaſion of us formidable to him and full of danger; or elſe by *hurting* or *deſtroying* him. Of the *former* way

there can be no doubt, but that 'tis lawful and altogether blameleſs:

VI. *Self Defence by hurting another.*

BUT the *latter* may admit of ſcruple, becauſe Mankind may ſeem to have an *equal Loſs*, if the *Aggreſſor* be kill'd, or if I loſe *my* Life; and becauſe one in the ſame Station with my ſelf will be deſtroy'd, with whom it was my Duty to have liv'd in *Civil Society*: Beſide that a *forcible Defence* may be the occaſion of *greater outrages* than if I ſhould betake my ſelf to flight, or patiently *yield* my Body to the Invader. But all theſe are by no means of ſuch weight as to render this ſort of Defence unlawful. For when I am dealing fairly and friendly with another, it is requiſite that he ſhew himſelf ready to do the like, or elſe he is not a fit Subject of ſuch good Offices from me. And becauſe the End of the Law of Society is the *Good of Mankind*, therefore the Senſe thereof is ſo to be taken, as effectually to preſerve the Welfare of every *Individual* or particular man. So that if another man make an *attempt* upon my Life, there is no Law that commands me to *forgo* my own Safety, that ſo he may practiſe his Malice with *Impunity*: And he that in ſuch caſe is *hurt* or *ſlain*,

ſlain, muſt impute his Miſchief to his *own Wickedneſs*, which ſet me under a Neceſſity of doing what I did. Indeed otherwiſe, whatſoever *Good* we enjoy either from the bounty of *Nature* or the help of our own *Induſtry*, had been granted to us in vain, if we were not at liberty to *oppoſe* the Violences of Ruffians who would wrongfully raviſh all from us; and *honeſt* men would be but a ready Prey for *Villains*, if they were not allow'd to make uſe of *Force* in defence of themſelves againſt the others Inſults. Upon the whole then, it would tend to the *Deſtruction* of Mankind, if *Self-Defence* even with *Force* were prohibited to us.

VII. *Extremities laſt to be uſed.*

NOT however that hence it follows, that as ſoon as any *Injury* is threatned us, we may preſently have recourſe to *Extremities*; but we muſt firſt try the *more harmleſs Remedies*; for inſtance, we muſt indeavour to keep out the Invader by cutting off his Acceſs to us; to withdraw into ſtrong places; and to admoniſh him to deſiſt from his outragious Fury. And it is alſo the Duty of a prudent man to put up a *ſlight Wrong*, if it may conveniently be done, and to *remit* ſomewhat of his Right,

rather than by an unſeaſonable oppoſition of the Violence to expoſe himſelf to a *greater danger*; eſpecially if that upon which the Attempt is made, be ſuch as may eaſily be made amends for or repair'd. But in caſes where by theſe or the like means I cannot ſecure my ſelf, in order to it I am at liberty to have recourſe even to *Extremities.*

VIII. *Two ſorts of perſons in this Caſe.* *The firſt.* But that we may clearly judg, whether a man contains himſelf within the bounds of an *unblamable Defence of himſelf*; it is firſt to be examin'd, whether the perſon be one who is in a ſtate of *Natural Liberty* or *ſubject to no man*, or one who is obnoxious to ſome *Civil Power*. In the *firſt* Caſe, if another ſhall offer violence to me, and cannot be brought to change his malicious mind and live quietly, I may repel him even by *killing* him. And this not only when he ſhall attempt upon my *Life*, but if he endeavour only to *wound* or *hurt* me, or but to *take away* from me what is mine, without medling with my Body. For I have no aſſurance but that from theſe *leſſer Injuries* he may proceed to *greater*; and he that has once profeſs'd himſelf my Enemy, can no longer pretend any Right in his own defence, but that I may

may reſiſt him after what *manner* I pleaſe. And indeed the *Sociality* neceſſary to Human Life would become unpracticable, if a man may not make uſe even of *Extremities* againſt him who ſhall irreclamably *perſiſt* in the commiſſion though but of *meaner Wrongs*. For at that rate the moſt *modeſt* perſons would be the continual Laughing-ſtock of the *vileſt* Rakehels. Farther, in this State, I may not only oppoſe with force the *preſent danger* threatned, but having repell'd *that*, I may purſue the Invader to ſuch purpoſe, as to render my ſelf ſufficiently *ſecure* of him for the *future*. Concerning which *Security* this is to be obſerv'd. If a man having done me wrong, afterward of his own accord repenting of what he has done, ſhall beg my *Pardon* and offer *Reparation* of the Damage, I am then obliged to be reconcil'd to him upon his faithful Promiſe; becauſe 'tis the moſt certain Token of an amendment of Mind, if a man *repent* of himſelf and beg *pardon*. But he who then only pretends *Repentance* when he wants *Power* to proſecute his Violences, is not ſafely truſted for his bare Word; and therefore from ſuch a one all *Poſſibilities* of doing miſchief are to be cut off, or ſome *Con-*

finement

finement must be laid upon him, that so he may never after become formidable.

IX. *The second.* But in the *second* State, those who live Subjects to a *Civil Power*, may then only betake themselves to *Violence* in the Defence of themselves, when the Time and Place will not admit of any application to the *Magistrate* for his assistance in repelling the Injury, by which mans Life, or ought that is as valuable as Life, or some Good which can never be repair'd is manifestly endanger'd; and this is to be used *no farther* than for the *avoiding* the Mischief; the rest being left to the Judgment of the Magistrate, to wit, *Punishing* and *Caution* that the Offender do so no more.

X. *An Aggressor by mistake.* It is moreover not only lawful for us to defend our selves against such a one as out of an *evil design* against us shall offer us a Mischief, but against him also who shall do so by *Mistake*. For instance, if a *Mad man* shall set upon me, or one that takes me for another person for whom he hath a grudge. For 'tis enough, that no man has a *Right* to assault or kill me, and I am not under any *Obligation* to suffer Death for nothing.

Con-

CONCERNING the *Time* in which the Defence of our ſelves may be made, it is to be two ways conſider'd, as in the *two Caſes* juſt before laid down. Where each party live in their *Natural Liberty*, although it may and ought to be *preſum'd*, that they will mutually comply with the Duties of the Law of Nature; yet conſidering the Pravity of Humane Inclinations, they are not obliged to be ſo *ſecure* of themſelves, but they may ſeaſonably take care of their Safety by *innocent Methods* of Defence; as ſuppoſe, by fortifying their Avenues againſt any that ſhall pretend to act hoſtilities upon them; by providing Ammunition and liſting Men; by making Confederacies; by having a watchful Eye upon the deſigns of others, and the like. But this *Suſpicion*, which has its riſe from the Pravity of Humane Nature, is not ſo to be improv'd, as to give occaſion to oppreſs others by Violence under pretext of Self-Defence; no, not tho I ſee my Neighbors *Power* to grow too *great*, eſpecially if ſuch Power has its increaſe from *harmleſs Induſtry*, or be the effect of the Bounty of *Providence*, without the Oppreſſion of others. Nay, if ſuch Neighbour ſhall, beſide his *Power* of hurting, demonſtrate alſo

XI. *Time for Self-Defence. The firſt Caſe.*

ſo a *Deſign* ſo to do not to *me*, but to *another*, I may not preſently without any more ado invade him in my own name; unleſs I am under an Alliance to aſſiſt that *other* who is aſſaulted by this greater *Power*. And then it goes farther in this Caſe, and makes it expedient to uſe greater Vigour in my Reſiſtance, if it be probable, that as ſoon as this *great Power* has diſpatch'd the *other*, I am like to be *next* invaded, and that the *firſt Conqueſt* he ſhall make is to be the Inſtrument of *another* which he intends. But again when it *plainly* appears, that another is *making preparation* to invade me, though he have not openly *declar'd* his Intention, I may immediately enter upon *violent Methods* for my own Defence, and *anticipate* the Aggreſſor; ſuppoſing that he would not lay by his hoſtile Deſigns upon any *friendly Advice*, or that the *propoſing* ſuch Advice may prove of ill conſequence to my affairs. So that in this caſe he is to be accounted the *Aggreſſor*, who firſt *meditates miſchief* to his Neighbour, and makes *preparation* to that purpoſe; and he ſhall be interpreted to proceed by way of *Self-Defence*, who acting with *greater expedition* ſhall ſurpriſe the former, before he can bring

bring his Deſign to perfection. For it is not abſolutely neceſſary to *Self-Defence* that I *receive* the firſt ſtroke, or that I only *ward off* and *avoid* the Blows that are aim'd at me.

XII. *The ſecond.* But among men who live in a *Community*, the liberties for *Self-Defence* ought not to be near ſo large. For here, though I may know for certain, that another man has *arm'd* himſelf in order to ſet upon me, or has openly *threatned* to do me a miſchief; this will by no means bear me out in *aſſaulting* him; but he is to be *inform'd* againſt before the Civil Magiſtrate, who is to require *Security* for his good behaviour. The uſe of *Extremities* in repelling the Force being then only juſtifiable, when I am *already* ſet upon and reduc'd to ſuch *ſtreights*, that I have no opportunity to require the *Protection* of the Magiſtrate or the *Help* of my Neighbours; and even then I am not to make uſe of *Violence*, that by the ſlaughter of my Adverſary I may *revenge* the Injury, but only becauſe without it my *own Life* cannot be out of *danger*. Now the inſtant of *Time*, when any man may with impunity *deſtroy* another in his own defence, is, when the Aggreſſor being *furniſh'd* with Weapons for the purpoſe

poſe and *ſhewing* plainly a *deſign* upon my Life, is got into a *place* where he is very capable of doing me a miſchief, allowing me ſome time, in which it may be neceſſary to prevent rather than be prevented; although in *foro humano* a *little Exceeding* be not much minded in regard of the great diſturbance ſuch a danger muſt be thought to raiſe in the Spirit of Man. And the *Space of Time* in which a man may *uſe Force in his own defence*, is ſo long as till the Aſſailant is either *repuls'd*, or has *withdrawn* of his own accord, (whether in that moment *repenting* of his wicked deſign, or for that he ſees he is like to *miſs* of his aim) ſo that for the preſent he cannot hurt us any more, and we have an opportunity of retiring into a place of Safety. For as for *Revenge* of the wrong done, and *Caution* for future Security, that belongs to the Care of the *Civil Magiſtrate*, and is to be done only by *his* Authority.

XIII. *Allowances and Limitations.*

NEVERTHELESS though true it is, that we ought not to take away another mans *Life*, when it is poſſible for us after a more convenient way to avoid the Danger we are in; yet in conſideration of that great *perturbation of Mind*, which is wont

wont to be occaſion'd upon the appearance of *imminent Miſchief*, it is not uſual to be *over-rigorous* in the examination of theſe matters; for it is not likely that a man *trembling* under the *apprehenſion* of Danger ſhould be able to find out ſo exactly all thoſe *ways of eſcaping*, which to one who *ſedately* conſiders the Caſe may be plain enough. Hence though it is *Raſhneſs* for me to come out of a *ſafe* Hold to him who ſhall *challenge* me; yet, if another ſhall ſet upon me in an *open* place, I am not ſtreight oblig'd to betake my ſelf to *Flight*, except there be at hand ſuch a place of *Refuge* as I may withdraw into without peril: Neither am I always bound to *retire*; becauſe then I turn my defenceleſs Back, and there may be hazard of falling; beſide that having once loſt my poſture, I can hardly recover it again. But as the Plea of *Self-Defence* is allow'd to that perſon who ſhall thus encounter Danger when he is going about his lawful *buſineſs*, whereas if he had ſtaid at home he had been ſafe enough: ſo it is denied to him who being challeng'd to a *Duel*, ſhall by appearing *ſet himſelf* in that condition, that except he kill his Adverſary, himſelf muſt be ſlain. For the *Laws* having

ving *forbidden* his venturing into such *Danger*, any excuſe on account *thereof* is not to be regarded.

XIV. *Defence of Members.*

WHAT may be done for the defence of *Life* may alſo for the *Members*; ſo as that he ſhall be acquitted for an honeſt man who ſhall *kill* a Ruffian, that perhaps had no farther Intention than to *maim* him or give him ſome *grievous wound*: For all Mankind does naturally abhor to be *maim'd* or *wounded*; and the cutting off any, eſpecially of the more noble Members, is often not of much leſs value than Life it ſelf; beſide, we are not ſure beforehand, whether upon ſuch *wounding* and *maiming* Death may not follow; and to endure this is a ſort of *Patience* that ſurpaſſes the ordinary Conſtancy of Man, to which no man is regularly oblig'd by the Laws, only to gratifie the outragious humour of a Rogue.

XV. *Defence of Chaſtity.*

MOREOVER, what is lawful to be done for preſervation of *Life*, is adjudged to be ſo for *Chaſtity*. Since there cannot be a more horrid *Abuſe* offer'd to an honeſt Woman, than to force her out of that which being kept undefiled is eſteemed the greateſt *Glory* of their Sex; and to put upon her a Neceſſity of raiſing an Off-ſpring to her Enemy out of her own blood. XVI.

As for *Defence of Goods or Eſtate*, this may, among thoſe who are in a State of *Natural Liberty*, go as far as the *Slaughter* of the Invader, provided what is in controverſie be not a *Thing contemptible*. For without *things neceſſary* we cannot keep our ſelves alive; and he equally declares himſelf my Enemy, who wrongfully ſeizes my *Eſtate*, as he that attempts upon my *Life*. But in *Communities*, where what is raviſh'd from us may with the aſſiſtance of the *Civil Authority* be recover'd, this is not regularly allow'd; unleſs in ſuch caſe when he that comes to take away what we have, cannot be brought to *Juſtice*; on which account it is, that we may lawfully kill *Highway-men* and *Night-robbers*. XVI. *Defence of Goods Eſtate.*

And thus much for *Self-Defence* in thoſe who without provocation are *unjuſtly invaded* by others. But for him who has *firſt* done an *Injury* to another, he can only then rightly *defend* himſelf with *force* and *hurt* the other *again*, when having *repented* of what he has done, he has offer'd *Reparation* of the Wrong and *Security* for the future; yet he who was *firſt injur'd* ſhall out of ill nature *refuſe* the ſame, and endeavour to *revenge* himſelf by violence. XVI. *Self-Defence in him that firſt injur'd.*

XVIII. *Self-Preſervation in caſes of Neceſſity.*

Laſtly, *Self-Preſervation* is of ſo much regard, that if it cannot otherwiſe be had, in many caſes it exempts us from our obedience to the ſtanding Laws; and on this ſcore it is, that *Neceſſity* is ſaid to *have no Law.* For ſeeing Man is naturally inſpirited with ſuch an earneſt deſire to preſerve himſelf, it can hardly be preſum'd that there is any Obligation laid upon him, to which he is to ſacrifice his *own Safety.* For though not only *God*, but the *Civil Magiſtrate*, when the Neceſſity of affairs requires it, may lay upon us ſo ſtrict an Injunction, that we ought rather to die than vary a tittle from it; yet the *general Obligation* of Laws is not held to be ſo rigorous. For the Legiſlators, or thoſe who firſt introduc'd *Rules* for Mankind to act by, making it their deſign to promote the *Safety* and *common Good* of Men, muſt regularly be ſuppoſed to have before their eyes the condition of *Human Nature*, and to have conſider'd how *impoſſible* it is for a man not to ſhun and keep off all things that tend to his own *Deſtruction.* Hence thoſe Laws eſpecially call'd *Poſitive*, and all *Human Inſtitutions* are judg'd to except *Caſes of Neceſſity*; or, not to oblige, when the Obſervation of them muſt be accompanied

panied with ſome Evil which is *deſtructive* to *Human Nature*, or not tolerable to the *ordinary Conſtancy* of men; unleſs it be *expreſly* ſo order'd, or the *Nature* of the thing requires, that even *that* alſo muſt be undergone. Not that Neceſſity *juſtifies* the breach of a Law and commiſſion of Sin; but it is preſum'd from the favourable intention of the Legiſlators and the conſideration of Mans Nature, that *Caſes of Neceſſity* are not included in the general Words of a Law. This will be plain by an Inſtance or two.

XIX. *Cutting off Members.*

THOUGH otherwiſe Man have no ſuch Power over his own *Members*, as that he may loſe or maim any of them at his pleaſure; yet he is juſtifiable in *cutting off* a Gangren'd Limb, in order to ſave the *whole Body*, or to preſerve thoſe *parts* which are *ſound*, or leſt the other Members be rendred *uſeleſs* by a dead and cumberſom piece of Fleſh.

XX. *One loſt to ſave many.*

IF in a *Shipwrack* more men leap into the Boat than it is *capable* of carrying, and no one has more right than another to it; they may *draw Lots* who ſhall be caſt over-board; and if any man ſhall *refuſe* to take his chance, he may be thrown over without any more ado, as one that ſeeks the deſtruction of *all*.

XXI. *One lost to save Self.* IF *two* happen into imminent danger of their Lives, where *both* must perish; one may, as he sees good, hasten the death of the other, that he may save *himself*. For instance, If I, who am a skilful Swimmer, should fall into some deep Water with another who could not swim at all, and he clings about me; I not being strong enough to carry *him* off and *my self* too, I may put him off with *force*, that I may not be drown'd together with him; though I might for a little while be able to keep him up. So in a Shipwrack, if I have got a Plank which will not hold *two*, and *another* shall endeavour to get upon it, which if he does, we are *both* like to be drown'd, I may keep him off with what *violence* I please. And so if *two* be pursued by an Enemy meaning to kill them, *one* may be shutting a Gate or drawing a Bridge after him, secure *himself*, and leave the *other* in great probability of *losing* his Life, if it be not possible to save *both*.

XXII. *Another destroy'd or hurt to the same end.* CASES of *Necessity* may happen, where one may *indirectly* put another in danger of *Death*, or some *great Mischief*, when at the same time he means no harm to the Person, but only for his own *Preserva-*

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tion he is forc'd upon ſome Action, which probably may do the other a damage; always ſuppoſing that he had rather have choſen any *other* way, if he could have found it, and that he make that damage as *little* as he can. Thus, if a ſtronger man than I purſues me to take away my Life, and one meets me in a narrow way through which I muſt fly, if upon my requeſt he will not ſtand out of the way, or he has not time or room ſo to do, I may throw him down and go over him, though it be very likely that by the fall he will be much hurt; except he ſhould be one who has ſuch peculiar relation to me, that I ought for his ſake rather to ſurrender my ſelf to the Danger. And if he who is in the way cannot, upon my ſpeaking to him, get out of the way, ſuppoſe being lame or a Child, I ſhall be excuſed who try to leap over him rather than to expoſe my ſelf to my Enemy by delaying. But if any one ſhall out of wantonneſs or croſs humour hinder me or deny to give me the liberty of eſcaping, I may immediately ſet upon him and throw him down. Now thoſe who in theſe Caſes get any *Harm*, are to look upon it not as a *Fault* in the Per-

ſon that did it, but as an unavoidable *Miſfortune.*

XXIII. *Caſe of extreme Want.* IF a man, not through his own fault, happen to be in *extreme want of Victuals and Clothes* neceſſary to preſerve him from the Cold, and cannot procure them from thoſe who are wealthy and have great ſtore, either by intreaties, or by offering their value, or by propoſing to do work equivalent; he may without being chargeable with *Theft* or *Rapine* furniſh his Neceſſities out of their Abundance either by force or ſecretly, eſpecially if he do ſo with a deſign to pay the Price, as ſoon as he ſhall have an opportunity. For it is the Duty of the rich man to ſuccour one in ſuch a needy condition. And though regularly what depends upon *Courteſie* ought by no means to be extorted by *Force*, yet the *Extreme Neceſſity* alters the Caſe, and makes theſe things as claimable as if they were abſolutely due by a formal Obligation. But it is firſt incumbent upon the Neceſſitous perſon to try all ways to ſupply his Wants with the *Conſent* of the Owner, and he is to take care that the Owner be not thereby reduc'd to the *ſame Extremity*, nor in a little time like to be ſo; and that *Reſtitution* be made, eſpe-

eſpecially if the Eſtate of the other be ſuch, as that he cannot well bear the loſs.

Laſtly, THE *Neceſſity* of our own affairs ſeems ſometimes to juſtifie our deſtroying the *Goods of other men*; provided ſtill, that we do not bring ſuch Neceſſity upon our ſelves by our *own Miſcarriage*; that there can not be any *better* way found; that we caſt not away that of our Neighbours which is of *greater value* in order to ſave our own which is of *leſs*; that we be ready to pay the *Price*, if the Goods would not otherwiſe have been deſtroy'd, or to bear our ſhare in the Damage done, if the Caſe were ſo that *his* muſt have periſh'd together with *ours*, but now by their Loſs *ours* are preſerv'd. And this ſort of Equity is generally found in the *Law*-Merchant. So alſo in caſe of *Fire*, I may pull down or blow up my Neighbours Houſe, provided thoſe whoſe Houſes are by this meaps ſaved, do make good the Damage proportionably. XXIV. *Deſtroying other mens Goods.*

Chap. VI.

Of the Duty of one man to another, and firſt of doing no Injury to any man.

I. *Reciprocal Duties of two ſorts.*

We come now to thoſe Duties which are to be practiſed by *one man towards another*. Some of theſe proceed from that *common Obligation* which it has pleaſed the Creator to lay upon all men in general; others take their Original from ſome certain *Humane Inſtitutions*, or ſome *peculiar adventitious* or accidental *State* of men. The *firſt* of theſe are *always* to be practiſed by every man towards all men; the *latter* obtain only among thoſe who are in ſuch *peculiar* Condition or State. Hence thoſe may be called *Abſolute*, and theſe *Conditional*.

II. *No Wrong to be done.*

Among thoſe Duties we call *Abſolute*, or thoſe of every man towards every man, this has the firſt place, that *one do no wrong to the other*; and this is the *ampleſt* Duty of all, comprehending *all Men* as ſuch, and it is at the ſame time the *moſt eaſie*, as conſiſting only in an *omiſſion* of acting, unleſs when unreaſonable Deſires and

and Luſts are to be curb'd. It is alſo the *moſt neceſſary*, becauſe without it *Human Society* cannot be preſerv'd. For I can live quietly with him that does me no good, or with whom I have no manner of Correſpondence, provided he do me *no harm*. Nay this is all we deſire from the *greateſt part* of Mankind, the doing mutually *good Offices* lying but between a few. But I can by no means live *peaceably* with him that *wrongs* me; Nature having inſtill'd into every man ſuch a tender Love of *himſelf* and what is his *own*, that he cannot but by all means *repel* thoſe men who ſhall make any attempt upon one or t'other.

III. *So to do, a Crime.*

By this Duty are fenc'd not only what we have by the Bounty of *Nature*; ſuch as our Laws, Bodies, Limbs, Chaſtity, Liberty: but whatſoever by any *Humane Inſtitution* or *Compact* becomes our Propriety; ſo as by this it is forbidden to take away, ſpoil, damage or withdraw in whole or in part from our Uſe whatſoever by a lawful Title we are poſſeſs'd of. Whence all thoſe Actions are hereby made Crimes, by which any Wrong is done to others, as Murther, Wounding, Striking, Rapine, Theft, Fraud, Violence, whether

ther practiſed directly or indirectly, mediately or immediately, and the like.

IV. *Reparation of Wrongs.* FARTHER, hence it follows, That *if any Harm or Damage be done to another, he who is truly chargeable as Author of the Wrong, ought as far as in him lies, to make Reparation.* For otherwiſe the Precept would be to no purpoſe, That no man ſhall be hurt nor receive damage; if when he has actually ſuſtain'd a Miſchief, he muſt put it up quietly, and he who did the Injury ſhall enjoy *ſecurely* the Fruit of his Violence, without *refunding.* And ſetting aſide this *Neceſſity* of *Reſtitution* the Pravity of Mans Nature is ſuch, that they would never forbear *injuring* one another, and it would be very hard for him who has ſuffer'd Wrong, to compoſe his mind ſo as to live peaceably with the other, till *Reparation* were made.

V. *Damage how to be accounted.* THOUGH the word *Damage* may ſeem properly to belong to loſs in Goods, yet we take it here in the large ſenſe, that it may ſignifie all manner of *Harm, ſpoiling, diminiſhing,* or *taking away* what is already ours, or *intercepting* that which by an *abſolute Right* we ought to have, whether it be beſtow'd upon us by Nature, or given us by Man and humane Laws;

Laws; or laſtly, the *Omiſſion* or *Denial* of paying what by a *perfect Obligation* is due to us. But if ſuch Payment only be ſtopt, as was *not due* by any *perfect Obligation*, it is not look'd upon as a Damage that ought to be made good; for it would be unmeet to account it a *Wrong* ſuffer'd, if I receive not ſuch Stipends, and unreaſonable for me to demand as my *Right*, what I cannot expect from another but under the name of a *Free Gift*, and which I can by no means call *my own*, till after I have receiv'd it.

VI. *Damage in expectations.*

UNDER the head of *Damage* liable to Reparation, we muſt alſo comprize not only a Miſchief, Loſs or Interception of what is ours or due to us; but alſo ſuch *Profits*, as do naturally accrew from the thing, or have already accrew'd, or may fairly be *expected*, if it was the right of the Owner to receive them; allowing ſtill the Expences neceſſary for gathering in ſuch Profits. Now the Value of *Profits* thus in *Expectation* only is to be high or low according as they are certain or uncertain, and will be ſooner or later receiv'd. And laſtly, that alſo is to be called *Damage*, which upon a hurt given, does of Natural Neceſſity *follow* thereon.

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VII. *Damage mediately or immediately done.*

ONE man may damnifie another not only *immediately* or by *himself*, but alſo by *others*: And it may happen that a Damage immediately done by *one man* may be chargeable upon *another*, becauſe he contributed ſomewhat to the Action either by doing what he ought not, or not doing what he ought to have done. Sometimes among *ſeveral perſons* who concur'd to the ſame Fact, one is to be accounted the *Principal*, others but *Acceſſories*; ſometimes they may all be *equally Parties*. Concerning whom it is to be obſerved, that they are ſo far oblig'd to *repair* the Wrong as they were indeed the *Cauſes* thereof, and by ſo much as they contributed to doing *all* or *part* of the Damage. But where any one did not actually aſſiſt in the Treſpaſs committed; nor was antecedently a Cauſe of its being done, nor had any Advantage by it; there though upon occaſion of the Injury done, he may be *blame-worthy*, yet he cannot be any ways oblig'd to *Reſtitution*: and of this ſort are ſuch as *rejoice* at their Neighbours Misfortunes, ſuch as *commend* the Commiſſion of Outrages, or are ready to *excuſe* them, who *wiſh* or *favour* the practice of them, or who *flatter* the Actors therein.

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WHERE *many* have join'd in an Action from whence Damage has come, he in the *first* place ſhall be chargeable with *Reparation*, by whoſe *Command* or powerful *Influence* the others were put upon the Action; and he who immediately perpetrates the thing, to which he could not decline his helping hand, ſhall be eſteem'd but only as the *Inſtrument*. He who *without any conſtraint* concern'd himſelf in the Enterpriſe ſhall be *chiefly liable*, and then the reſt who aſſiſted in it. But this ſo, as that if *Reſtitution* be made by the former, then the latter are clear'd, (which in *Penal Caſes* is otherwiſe.) If *many in combination* have committed an Injury, all are oblig'd for each one ſingle and each one ſingle is oblig'd for all; ſo as that if *all* are ſeiz'd, they muſt each pay their ſhares to make good the Loſs; and if all eſcape but *one*, he ſhall be oblig'd to pay for all; but where ſome amongſt 'em are *inſolvent*, thoſe who are *able* muſt pay the whole. If many *not in combination* concur to the ſame thing, and it can plainly be diſcern'd *how much* each of them contributed to the doing of the Miſchief; each ſhall only be accountable for ſo much as *himſelf* was the Cauſe of. VIII. *Damage done by many.*

of. But if *one ſhall pay* the whole, they are *all diſcharg'd* for the ſame.

IX. *Damage by Negligence.*

NOT only he who out of an *evil deſign* does wrong to another, is bound to Reparation of the Damage, but he who does ſo through *Negligence* or *Miſcarriage*, which he might eaſily have avoided. For it is not a ſlight part of the Duties of Society, to manage our ſelves ſo circumſpectly, that our Converſation become not *miſchievous* or *intolerable* to our Neighbour; and often men are by *peculiar Obligations* tied to uſe the *utmoſt Diligence* in certain affairs; nay, if the Nature of the Caſe did require the *exacteſt Care*, then a very little blame ſhall ſuffice to make *Reparation* to be due: Unleſs the fault lay rather more in him who was harm'd than in him who did it; or unleſs ſome great Perturbation of mind or ſome Circumſtance in the matter would not allow the moſt deliberate Circumſpection; as, when a Soldier in the heat of Battel in handling his Arms ſhall hurt his Comrade.

X. *Damage by Chance.*

BUT he who by *meer Chance*, without any Fault of his own, ſhall do harm to another, is not oblig'd to *Reparation*. Becauſe nothing in this Caſe being done which

which can be chargeable upon him, there is no reaſon, why he who *unwillingly* did a Miſchief ſhould rather ſuffer, than he to whom it was done.

XI. *Damage by a Vaſſal.*

It is alſo agreeable to Natural Equity, if *my Vaſſal*, though not by my deſire, do Wrong to another, that either I make it good or ſurrender *him* to the Party injur'd. For 'tis true this *Vaſſal* is *naturally oblig'd* to Reparation; but he not having wherewith, and his Body being the *Property* of his Patroon, it is but juſt that ſuch Patroon either *repair* the Loſs ſuſtain'd, or *deliver* him up. Otherwiſe ſuch a Bondman would be at liberty to do what Miſchief he liſted, if Amends cannot be had from *him*, becauſe he is the Owner of nothing, no not of the Body he bears; nor of his *Patroon*. For, let him beat the Slave never ſo ſeverely, or puniſh him with the cloſeſt Impriſonment, this gives *no Reſtitution* to the perſon wrong'd.

XII. *Damage by Cattel.*

The ſame ſeems to be juſt in the Caſe of our *Cattel* or any *living Creature* we keep, that, when they *againſt* our Wills and by a motion of their own contrary to their *Natures*, do a Miſchief to another, we either make *Reparation* or *give up*

up the ſame. For, if I am hurt by any Animal that lives in its *Natural Liberty*, I have a Right, by what means I can, to give my ſelf ſatisfaction by *taking* or by *killing* it; and this Right doubtleſs cannot be taken away by its being in the poſſeſſion of another. And whereas the Owner of this Animal makes ſome *Gain* by it, but I have ſuffer'd *Loſs* by the ſame; and whereas the *Reparation* of *Wrong* is more to be favour'd than procuring *Gain*; it appears that I may with reaſon demand Satisfaction from the *Owner*, or if the Animal be not worth ſo much, then that *it* at leaſt be deliver'd to me on account of the Damage ſuſtain'd.

XIII. *Recapitulation.* THUS then he who without any *evil Intention* does an Injury to another, ought of his own accord to offer *Reparation*, and to proteſt himſelf to have done it *unwillingly*, leſt the injur'd perſon take him for his *Enemy* and endeavour to *retaliate* the Miſchief. But he who with a *naughty deſign* ſhall wrong his Neighbour is not only bound to offer *Reparation*, but to declare his *Repentance* for the Fact and to beg *Pardon*. On the other ſide, the *wronged party* having Satisfaction made him, is oblig'd upon the *Repentance* of the

the other and at his *Requeſt* to grant him *Pardon*. For he that will not be content when *Reparation* is made him, and a fit *Submiſſion*, but ſtill ſeeks to revenge himſelf by force, does nothing elſe but gratifie his own ill Nature, and ſo diſturbs the common Peace of Men without cauſe. And upon that account *Revenge* is by the Law of Nature condemn'd, as propoſing no other end, than doing Miſchief to thoſe who have hurt us, and pleaſing our ſelves in their Sufferings. Moreover, men ought to be the more apt to pardon *each others* Offences upon a conſideration how often themſelves tranſgreſs the *Laws of God*, and have therefore daily ſo much need of begging Forgiveneſs of *Him*.

Chap. VII.

The Natural Equality of Men to be acknowledg'd.

I. *Equality of Mankind.*

MAN is a Creature not only most solicitous for the *Preservation* of Himself; but has of Himself also so nice an *Estimation*, that to diminish any thing thereof does frequently move in him as great Indignation as if a Mischief were done to his Body or Estate. Nay there seems to him to be somewhat of *Dignity* in the appellation of **Man**, so that the last and most efficacious Argument to curb the Arrogance of insulting men, is usually, *I am not a Dog, but a Man as well as your self.* Since then Humane Nature is the *same* in us all, and since no man will or can chearfully join in Society with any by whom he is not at least to be esteem'd equally as a Man and as a partaker of the same Common Nature: It follows that among those *Duties which men owe to each other*, this obtain the *second* place, That *every man esteem and treat another*, as nat-

naturally equal to himſelf, or as one who is a Man as well as he.

II. *Where this Equality conſiſts.*

Now this *Equality* of Mankind does not alone conſiſt in this, that men of ripe age have almoſt the ſame *Strength*, or if one be weaker he may be able to kill the ſtronger, either by *Treachery*, or *Dexterity*, or by being better furniſh'd with *Weapons*; but in this, that though Nature may have accompliſh'd one man beyond another with various endowments of Body and Mind; yet nevertheleſs he is oblig'd to an obſervation of the *Precepts* of the *Law Natural* towards the meaner perſon, after the ſame manner as *himſelf* expects the ſame from *others*; and has not therefore any greater liberty given him to inſult upon his Fellows. As on the other ſide the Niggardlineſs of *Nature* or *Fortune* cannot of themſelves ſet any man ſo low, as that he ſhall be in a worſe condition as to the enjoyment of *Common Right* than others. But what *one man* may rightfully demand or expect from *another*, the ſame is due to *others* alſo (Circumſtances being alike) from *him*; and whatſoever *one* ſhall deem reaſonable to be done by *others*, the like it is moſt juſt he practiſe *himſelf*: For *the Obligation of maintain-*

ing Sociality among Mankind equally binds every man; neither may one man more than another violate the Law of Nature in any part. Not but that there are other *popular Reaſons* which illuſtrate this *Equality*; to wit, that we are all deſcended of the *ſame Stock*; that we all are born, nouriſhed and die after the *ſame manner*; and that God has not given any of us a *certain Aſſurance* that our happy Condition in the World ſhall not at any time be *changed*. Beſides, the Precepts of the Chriſtian Religion tell us that God favours not man for his Nobility, Power or Wealth, but for *ſincere Piety*, which may as well be found in a *mean* and *humble* man, as in thoſe of *high degree*.

III. *Recompence for Service done.* Now from this *Equality* it follows, that he who would make uſe of other mens labour for his own benefit, ought to be ready to make a *Recompence*. For he who requires that other men ſhould do him kindneſſes, and expects *himſelf* to be *free* from doing the like, muſt be of opinion that thoſe other men are below himſelf, and not his *Equals*. Hence as thoſe perſons are the *beſt Members* of a Community, who without any difficulty allow the ſame things to their Neigh-

Neighbor that themſelves require of him; ſo thoſe are altogether *uncapable of Society*, who ſetting a high rate on themſelves in regard to others, will take upon 'em to act any thing towards their Neighbour, and expect a greater Reſpect than the reſt of Mankind, and demand a larger ſhare of matters to which no man has a claim, though they can make out no better Right than another: Whence this alſo is an univerſal Duty of the Law Natural, *That no man, who has not a peculiar Right, ought to arrogate more to himſelf, than he is ready to allow to his fellows, but permits other men to enjoy the ſame Equity with himſelf.*

IV. *Diſtributive Juſtice.*

THE ſame *Equality* alſo ſhews what every man's behaviour ought to be, when his buſineſs is to *diſtribute Juſtice* among others; to wit, that he treat them as *Equals*, and indulge not that, beſide the Merits of the Cauſe, to one, which he denies to another. For if he do otherwiſe, he who is diſcountenanc'd is at the ſame time affronted and wrong'd, and loſes ſomewhat of the Dignity which Nature beſtow'd upon him. Whence it follows, that things which are in common, are of right to be *divided* by equal parts among

thoſe who are equal; where the Thing will not admit of *Diviſion*, they who are equally concerned, are to uſe it *indifferently*; and, if the Quantity of the thing will bear it, as much as each party ſhall think fit; but if this cannot be allow'd, then it is to be uſed after a *ſtated* manner, and *proportionate* to the Number of the Claimants; becauſe 'tis not poſſible to find out any other way of obſerving *Equality*. But if it be a Thing of that nature as not to be capable of being *divided*, nor of being poſſeſt in *common*, then it muſt be uſed by *turns*; and if this yet will not anſwer the point, and it is not poſſible the reſt ſhould be ſatisfied by an *Equivalent*, the beſt way muſt be to determin Poſſeſſion by *Lot*; for in ſuch Caſes a fitter Remedy cannot be thought on, as to removing all opinion of Partiality and Contempt of any party, and not debaſing the perſon whom Fortune does not favour.

V. *Pride.* THIS Duty is violated by *Pride*, when one without any cauſe or for a cauſe not ſufficient, bears himſelf above his Fellows, and deſpiſes them as beneath himſelf. We ſay, *without any Reaſon*. For where a man is regularly poſſeſs'd of ſome *Right*, which

which gives him a Preference to other men, he may lawfully *make uſe of* and *aſſert* the ſame, ſo it be without vain Oſtentation and the contempt of others; as on the contrary every one is with good reaſon to *yield* that *Reſpect* and *Honour* which is *due* to *another*. But for the reſt, *true Generoſity* has always for its Companion a *decorous Humility*, which ariſes from a Reflexion on the Infirmity of our Nature, and the Faults, of which our ſelves either have been or may hereafter be guilty, which are not leſs heinous than thoſe which may be committed by other men. The Inference we ought to make from hence, is, that we do not over-value our ſelves with regard to others, conſidering that *they* equally with us are endow'd with a *free uſe of their Underſtanding*, which they are alſo capable of managing to as *good purpoſe*: the *regular Uſe* whereof is that alone which a man can call *his own*, and upon which the *true Value* of Himſelf depends. But for a man without any reaſon to ſet a high eſteem upon himſelf is a moſt *ridiculous Vice*; firſt, becauſe 'tis in itſelf ſilly, for a man to carry it high for nothing at all; and then becauſe I muſt ſuppoſe all *other men* to be

Coxcombs, if I expect from them a great regard when I deſerve none.

VI. *Signs contemptuous.*

THE violation of this Duty, is yet carried farther, if a man ſhew his *Contempt* of another by outward Signs, Actions, Words, Looks, Deriſion, or any other abuſive way. And this fault is therefore the more grievous, becauſe it eaſily excites the Spirits of men to Anger and Revenge: So that there are many who will rather venture their *Lives* upon the ſpot, much more will they break the Publick Peace, than put up an *Affront* of that nature; accounting that hereby their Honour is wounded and a ſlut is put upon their Reputation, in the untainted preſervation of which conſiſts all their Self-ſatisfaction and Pleaſure of mind.

CHAP.

Chap. VIII.

Of the mutual Duties of Humanity.

I. *Doing good to others.*

AMONG the Duties of one man towards another; which muſt be practiſed for the ſake of *Common Society*, we put in the *third* place this, *That every man ought to promote the good of another, as far as conveniently he may.* For all Mankind being by Nature made, as it were, *akin* to each other; it would be no great matter for us not to *hurt* or not to *deſpiſe* our Fellows; but we ought alſo to do ſuch *good Offices* to others, or mutually to communicate the ſame, as that common *brotherly Love* may be kept up among Men. Now we become beneficial to our Neighbour, either *indefinitely* or *definitely*; and that either parting with *ſomething* or *nothing* our ſelves.

II. *Benefactors, the firſt ſort.*

THAT man *indefinitely* promotes the good of others, who takes ſuch neceſſary care of his *Mind* and *Body*, that he may be able to perform ſuch Actions as may be profitable to his Neighbour; or who by the *Acuteneſs* of his *Wit* finds out ſomething

thing that may be of advantage to Mankind. So that those are to be accounted guilty of a *breach* of this *Duty*, who betaking themselves to no *honest Calling* spend their Lives in Sloth, as if their Souls were given 'em but to serve as Salt to keep their Bodies from stinking, or as if they were born but to make up a Number and eat their share: And such as being *content* with the Estates their *Ancestors* have left 'em, think they may give themselves up to *Idleness* without blame, because they have whereon to live by the Industry of others: And those who *alone* enjoy what they have got, not bestowing any part upon others: Finally, all those who like Hogs, do good to no one till they *die*; and all that sort of Wretches who only serve to load the Earth with their useless weight.

III. *Such deserve Honour.*

ON the other side, to those who make it their business to deserve well of Mankind the rest of the World *owe* thus much, that they don't envy 'em, nor lay any rubs in their way while by their noble Actions they seek the Universal Good: And if there be no possibility for themselves to *imitate* 'em, they at least ought to pay a *Regard* to their *Memory* and promote

mote their *Honour*, which perhaps is all they ſhall get by their Labours.

IV. *Good done without detriment to Self.*

Now *not to do* readily all that *Good* to others which we can do without detriment, labour or trouble to our ſelves, is to be accounted deteſtable *Villany* and *Inhumanity*. Theſe are wont to be called *Benefits which coſt nothing*, or which are of advantage to the Receiver without being a charge to the Beſtower. Such as, to allow the uſe of the running Water, the letting another light his Fire by mine, the giving honeſt Advice to him that conſults me, the friendly directing a wandring man to the right Way, and the like. So if a man have a mind to quit the poſſeſſion of a thing, either becauſe he has too much, or becauſe the keeping of it becomes troubleſome, why ſhould he not rather leave it fit for uſe to others, (provided they are not Enemies) than to mar or deſtroy it? Hence it is a Sin for us to *ſpoil Victuals*, becauſe *our Hunger* is ſatisfied; or to *ſtop up* or cover a *Spring*, becauſe we have quench'd *our Thirſt*; or to deſtroy *Sea-marks* or * *Mercuries*, when our ſelves have made uſe of them. Under this Head may be comprehended alſo the *little Alms* beſtow'd by the wealthy upon Travel-

* Inſcribed Poſts ſet up in Highways to direct

on thoſe who are in want; and that *Kindneſs* which we juſtly ſhew to *Travellers*, eſpecially if under neceſſities, and the like.

V. *Benefactors, the ſecond ſort.*

BUT it is a higher degree of Humanity, out of ſingular favour to do a good turn freely, which coſts either *Charge* or *Pains*, that ſo another may either have his Neceſſities relieved, or acquire ſome conſiderable Advantage. And theſe, by way of Excellence, are called *Benefits*, and are the fitteſt matter for rendring men Illuſtrious, if rightly temper'd with Prudence and Magnanimity. The *Diſpenſation* whereof and the *Manner* are to be regulated according to the *Condition* of the *Giver* and *Receiver*. Wherein care is firſt of all to be taken, that the Bounty we are about to exerciſe do not *more hurt* than *good* to the perſon to whom we deſign a kindneſs, and to others; next, that our Bounty be not *greater* than conſiſts with our Ability; then that the *worthineſs* of men be regarded in our diſtribution, and preference given to the *well-deſerving*; that we conſider *how far* each ſtands in need of our help, and obſerve the degrees of *Relation* among men; moreover 'tis to be known *what* every one wants moſt,

moſt, and what they can or cannot compaſs *with* or *without* our *aſſiſtance*. The *Manner* alſo of exerciſing acts of Kindneſs will render them more acceptable, if they be done *chearfully*, *readily*, and *heartily*.

VI. *Gratitude.*

AND then he who *receives* a Benefit ought to have a *grateful Mind*, by which he is to make it manifeſt, that it was *acceptable* to him, and that for its ſake he has kind *wiſhes* for the Donor, and that he wants nothing but an *opportunity* or an *ability* of making, if poſſible, a *Requital* of the full value or more. For it is not abſolutely neceſſary that the Returns we make be *exactly tantamount* to the Courteſie we receive, but our Good-Will and hearty Endeavour are in lieu to be accepted. Not but that ſometimes he who pretends to have done me a kindneſs, may not have reaſon to ſay, he has *obliged* me; as, if a man ſhall drag me out of the Water, into which he puſh'd me before, I owe him no thanks for that.

VII. *Thanks.*

NOW by how much the more *Benefits* are apt to oblige and place engagements on the minds of men, by ſo much ought the party who is *beholden* be the more

more eager to return his *Thanks.* If it be but becauſe we ought not to ſuffer our Benefactor, who out of a good opinion he had of us has done us a kindneſs, to think worſe of us; and becauſe we ſhould not receive any Favour, but with a deſign to endeavour, that the Giver ſhall never have cauſe to repent of what he has done for us. For, if for any particular reaſon we are not willing to be beholden to ſuch or ſuch a man, he may civilly *avoid* the accepting of the *Courteſie.* And truly if no grateful Returns were to be made upon the Receipt of Benefits, it would be unreaſonable for any man to caſt away what he has, and to do a good turn where beforehand he is ſure it will be ſlighted. By which means all Beneficence, Good-Will and brotherly Love would be loſt among men; and there would be no ſuch thing as doing *kindneſſes frankly* nor any opportunities of procuring *mutual Friendſhips* left in the World.

VIII. *Ingratitude.* AND though, the *ungrateful man* cannot be preciſely ſaid to do *a Wrong*; yet the charge of *Ingratitude* is look'd upon as more baſe, more odious and deteſtable than that of *Injuſtice*: becauſe 'tis judg'd a ſign of an *abject* and *raſcally Soul* for a man

man to ſhew himſelf unworthy of the good opinion which another had entertain'd of his Probity, and not to be mov'd to ſome ſenſe of Humanity by *Benefits*, which have a power to tame even the Brutes. But, let *Ingratitude* be never ſo abominable, yet ſimply conſider'd, as it is a bare *Forgetting* of a Courteſie, and a *Neglect* of making a due return upon occaſion, Courts of Judicature take no cognizance of it; for it would loſe the name of *Bounty*, if it were redemandable by Law, as Money lent is; becauſe then it would be a *Credit*. And whereas it is a high inſtance of *Generoſity* to be grateful, it would ceaſe to be a *generous* Action, when ſo to do could not be avoided. Beſide that it would take up the buſineſs of all Courts, by reaſon of the great difficulty in making an Eſtimate of all the Circumſtances which either would enhanſe or leſſen the Benefit: And that it was to this end I beſtow'd it, (to wit, that I did not therefore demand a Promiſe of Repayment,) that ſo the other might have an occaſion of ſhewing his Gratitude, not for fear of Puniſhment, but out of love to Honeſty; and to manifeſt, that it was not in hopes of Gain, but only out of mere Kindneſs that I was liberal

beral of that, which I would not take care ſhould be reimburs'd to me. But for him who improves his Ingratitude, and not only gives no thanks to, but injures his Benefactor; this ſhall cauſe an *Aggravation* of his *Puniſhment*, becauſe it plainly demonſtrates the profligate Villany and Baſeneſs of his Mind.

CHAP. IX.

The Duty of men in making Contracts.

I. *Contracts.* FROM the Duties *Abſolute* to thoſe that are *Conditional* we muſt take our *Paſſage*, as it were, through the *intermediate Contracts*; for, ſince all Duties, except thoſe already mention'd, ſeem to preſuppoſe ſome Covenant either expreſs'd or imply'd; we ſhall therefore in the next place treat of the *Nature of Contracts*, and what is to be obſerv'd by the parties concern'd therein.

II. *The Neceſſity of them.* NOW it is plain that *it was abſolutely neceſſary for men to enter into mutual Contracts.* For though the Duties of *Humanity*

nity diffuſe themſelves far and near through all the inſtances of the Life of Man; yet *that* alone is not Ground ſufficient whereon to fix all the Obligations which may be neceſſary to be made *reciprocal* between one and another. For all men are not endow'd with ſo much Good Nature, as that they will do all good Offices to every man out of *mere kindneſs*, except they have ſome certain expectation of receiving the *like* again: and very often it happens that the Services we would have to be done to us by *other men* are of that ſort, that we cannot with *Modeſty* deſire them. Frequently alſo it may not *become* one of my Fortune or in my Station to be *beholden* to another for ſuch a thing. So that many times another cannot give, neither are we willing to accept, unleſs that other receive an *Equivalent* from us; and it happens not ſeldom, that my Neighbor *knows not* how he may be ſerviceable to my occaſions. Therefore, that theſe *mutual good Offices*, which are the Product of *Sociality*, may be more freely and regularly exerciſed, it was neceſſary that men ſhould agree among themſelves concerning what was to be done on this ſide and on that, which no man from the Law of Na-

ture alone could have assur'd himself of. So that it was before-hand to be adjusted what, this man doing *so* by his Neighbour, he was to expect *in lieu* of the same, and which he might lawfully *demand*. This is done by means of *Promises* and *Contracts*.

III. *Veracity.* WITH respect to this general Duty it is an Obligation of the Law of Nature, that *every man keep his Word*, or fulfil his Promises and make good his Contracts. For without this a great part of that Advantage which might naturally accrew to Mankind by a *mutual communication* of good Offices and useful Things, would be lost. And, but that an exact Observance of ones Promise is *absolutely necessary*, no man could propose to himself any *Certainty* in whatever he design'd, where he must depend upon the assistances of *others*. Besides that Breach of Faith is apt to give the justest occasions to Quarrels and Wars. For if, according to my Agreement, I perform my part, and the other falsifie his word, whatsoever I have *done* or *deposited* in expectation of his performance, is *lost*. Nay, though I have done *nothing* as yet, yet it may be a Mischief for me by this Disappointment to have my *Affairs* and

and *Purpoſes confounded*, which I could have taken care of ſome other way, if this man had not offer'd himſelf. And there is no reaſon I ſhould become ridiculous for having truſted one whom I took to be an honeſt and a good man.

IV. *Diſtinction.*

BUT it is to be obſerv'd, that ſuch things as are due to me only of *Courteſie*, differ from thoſe which I can claim on account of a *Contract* or *Promiſe*, in this reſpect chiefly: That, 'tis true, I may fairly deſire the honeſt performance of the *firſt*; but in this if the other ſhall neglect my Requeſt, I can only charge him with *Rudeneſs*, *Cruelty* or *hard dealing*; but I cannot *compel* him to do me reaſon either by my own Power or by any ſuperiour Authority. Which I am at liberty to do in the *latter* caſe, if that be not freely perform'd which ought to have been according to an *abſolute Promiſe* or *Covenant*. Hence we are ſaid to have an *imperfect Right* to thoſe things, but to theſe our Claim is *perfect*; as alſo that to the performance of the *firſt* we lie under an *imperfect*, but to the *other* under a *perfect* Obligation.

V. *Obligations different.*

OUR Word may be given, either by a *ſingle Act* where one party only is ob-

lig'd; or by an *Act reciprocal*, where more than one are parties. For ſometimes *one man* only binds himſelf to do ſomewhat; ſometimes *two* or *more* mutually engage each other to the performance of ſuch and ſuch things. The former whereof is call'd a *Promiſe*, the latter a *Covenant* or *Contract*.

VI. *Promiſes imperfect.*

PROMISES may be divided into *imperfect* and *perfect*. The former is, when we mean indeed to be oblig'd to make good our word to him to whom we promiſe; but we intend not to give him a power of *requiring* it, or of making uſe of force to compel us to it. As, if I ſay thus, I really deſign to do this or that for you, and I deſire you'l believe me. Here I ſeem more oblig'd by the rules of *Veracity* than of *Juſtice*; and ſhall rather appear to have done the promiſed Service out of a regard to *Conſtancy* and *Diſcretion*, than to *Right*. Of this ſort are the Aſſurances of great men who are in favour, whereby they *ſeriouſly*, but not upon their *Honours*, promiſe their Recommendation or Interceſſion, their preferring a man or giving him their Vote, which yet they intend ſhall not be demanded of them as matters of *Right*, but deſire they may be wholly

wholly attributed to their *Courteſie* and *Veracity*; that the Service they do may be ſo much the more acceptable, as it was uncapable of *Compulſion*.

VII. *Promiſe perfect.*

BUT that is call'd a *perfect Promiſe*, when I not only oblige my ſelf by my Word, but I give the other party Authority to *require* at my hands the performance of what I ſtipulated, as if 'twere a Debt.

VIII. *Conſent.*

MOREOVER, that *Promiſes* and *Contracts* may have a full Obligation upon us to *give* and to *do* ſomewhat, which before we were at liberty *not* to have done; or to *omit* that which we had a power to *do*, 'tis eſpecially requiſite that they be made with our *free Conſent*. For whereas the making good of any *Promiſe* or *Contract* may be accompanied with ſome *Inconvenience*, there can be no readier Argument why we ſhould not *complain*, than that we *conſented* thereto of our own accord, which it was in our power not to have done.

IX. *Conſent expreſs or tacit.*

AND this *Conſent* is uſually made known by outward *Signs*, as, by *Speaking*, *Writing*, a *Nod*, or the like; though ſometimes it may alſo be plainly intimated without any of them, according to the

Nature of the thing and other Circumſtances. So *Silence* in ſome Caſes and ſo circumſtantiated paſſes inſtead of a *Sign* expreſſing *Conſent*. To this may be attributed thoſe *tacit Contracts*, where we give not our formal Conſent by the Signs generally made uſe of among men; but the Nature of the buſineſs and other circumſtances make it fairly ſuppoſable. Thus frequently in the principal Contract, which is *expreſs*, another is included which is *tacit*, the Nature of the Caſe ſo requiring: And it is uſual, in moſt Covenants that are made, that ſome *tacit Exceptions* and *implied Conditions* muſt of neceſſity be underſtood.

X. *Who capable of giving conſent.*

But to render a man capable of giving a valid *Conſent*, 'tis abſolutely requiſite, that he have ſo far the *Uſe of his Reaſon*, as fully to *underſtand* the buſineſs that lies before him, and to know whether it be *meet* for him, and whether it lie in his *power* to perform it; and having conſider'd this, he muſt be capable of giving *ſufficient* Indications of his *Conſent*. Hence it follows, that the Contracts and Promiſes of *Ideots* and *Mad men* (except ſuch whoſe Madneſs admits of lucid Intervals) are null and void: And the ſame muſt

muſt be ſaid of thoſe of *Drunken men*, if they are beſotted to that degree as that their Reaſon is overwhelm'd and ſtupefied. For it can never be accounted a *real* and *deliberate Conſent*, if a man when his Brains are diſorder'd and intoxicated, ſhall on a ſudden and raſhly make fooliſh Engagements, and give the uſual Demonſtrations of Conſent, which at *another* time would have *oblig'd* him: and it would be a piece of *Impudence* for any man to exact the performance of ſuch a Promiſe, eſpecially if it were of any conſiderable weight. But if one man ſhall lay hold on the *opportunity* of anothers being drunk, and craftily making an *advantage* of his Eaſineſs of Temper under thoſe Circumſtances, ſhall procure any Promiſe from him, this man is to be accounted guilty of a *Cheat* and *Knavery*: Not but that, if, after the Effects of his Drink are over, he ſhall *confirm* ſuch Promiſe, he ſhall be *oblig'd*; and this not with any regard to what he ſaid when *drunk*, but to his Confirmation when *ſober*.

XI. *Conſent in young Perſons.*

As for *Conſent* in *young Perſons*, it is impoſſible for the Laws Natural to determine ſo nicely the *exact time* how long Reaſon will be too weak in them to ren-

der 'em capable of making Engagements; becauſe Maturity of Diſcretion appears earlier in ſome than in others; Judgment therefore muſt be made hereof by the *daily Actions* of the Perſon. Though this is taken care for in moſt Common-Wealths by *Laws* preſcribing a certain *Term* of years to all in general; and in many places it is become a commendable Cuſtom to ſet theſe under the *Guardianſhip* of wiſer men, whoſe Authority muſt be had to any Contracts they make, till the others youthful Raſhneſs be a little abated. For perſons of this Age, however perhaps they may well enough underſtand what they do, yet are prone to act with overmuch Eagerneſs and Imprudence, and to be too free of their Promiſes, having great Aſſurance, deſiring to be accounted Liberal, apt to be obſtinate in the choice of their Companions, and not inclin'd to Warineſs and neceſſary Diſtruſt. So that he can hardly paſs for an *honeſt* man, who makes any advantage of the *Eaſineſs* of this Age, and would gain by the *loſſes* of *young people*, who for want of Experience could not foreſee or place a true eſtimate thereon.

XII.

CONSENT alſo may be rendred invalid by a *Miſtake* or *Error.* Concerning which theſe Rules are to be obſerv'd. (1.) That when to my Promiſe, ſome *Condition* is ſuppoſed, without the conſideration whereof I ſhould not have made ſuch Promiſe; the ſame ſhall, without the other, have no Obligation upon me: For in this Caſe the Promiſer does not engage *abſolutely*, but upon a *Condition*, which not being made good, the Promiſe becomes null and void. (2.) If I am drawn into a Bargain or Contract by a *Miſtake*, which Miſtake I find before, as we uſe to ſay, Bulk is broke, or any thing done in order to the Conſummation thereof, it is but Equity that I ſhould be at liberty to retract; eſpecially if upon the Contract making, I plainly ſignified for what *Reaſon* I agreed to it; and that the other party ſuffers no *damage* by my going off from my Bargain, or, if he does, that I am ready to make *Reparation.* But when, as was ſaid afore, Bulk is broke, and the *Miſtake* is not found till the Covenant is either wholly or in part already perform'd, the party who was under an Error cannot retract, any farther than the other ſhall of *Courteſie* releaſe to him. (3.) When a *Miſtake* XII. *Miſtake in Contracts.*

ſtake ſhall happen concerning the *Thing* which is the *Subject* of the Contract, ſuch Contract is invalid, not for the ſake of the Miſtake, but becauſe the Bargain is not made good. For in Bargains of this nature, the *Thing* and all its *Qualifications* ought to be known, without which knowledg a fair Agreement cannot be ſuppoſed to be made. So that he who is like to ſuffer wrong by any Defect therein either may throw up his Bargain, or force the other to make the Thing as it ſhould be, or elſe to pay him the Value, if it happen'd through his Knavery or Negligence.

XIII. *Guileful Contracts.* But if a man be drawn into a Promiſe or Bargain by the *Craft* and *fraudulent* means of another; then the matter is thus to be conſider'd. (1.) If a *third* man were guilty of the Cheat, and the party with whom the Bargain is driven was not concern'd in it, the Agreement will be valid: but we may demand of him who practiſed the Knavery ſo much as we are loſers by being deceived. (2.) He who knaviſhly procures me to promiſe or contract with him, ſhall not ſet me under any Obligation. (3.) If a man will indeed come freely with a plain *deſign* to drive a Bargain, but in the very *Action* ſhall have a Trick

Trick put upon him; ſuppoſe, in the *Thing* bargain'd for, its Qualities or Value; the Contract ſhall be ſo far naught, as to leave it in the power of him who is deceived, either to relinquiſh his Bargain, or to require ſatisfaction for his loſs. (4.) If unfair dealing chance to be uſed in ſome things not *eſſential* to the buſineſs, and which were not *expreſly under regard*, this weakens not the Agreement, if for the reſt it be regularly made; though perhaps *one party* might have an eye to it, whilſt he bargain'd, and his Opinion might be cunningly cheriſh'd till the Contract were perfectly tranſacted.

XIV. *Contracts ſuſpicious.*

WHENSOEVER *Fear* is to be conſider'd in Promiſes or Bargains, it is two-fold, and may either be called a *probable Suſpicion* leſt we ſhould be deceived by another, and this becauſe he is one who is very much addicted to unjuſt practices, or has ſufficiently intimated his fraudulent deſign; or elſe a *panic Terror of the Mind*, ariſing from ſome grievous Miſchief threatned, except we make ſuch a Promiſe or Contract. Concerning the firſt ſort of *Fear*, (or *Miſtruſt* rather) theſe things are to be obſerved. (1.) He who truſts the Engagements of one who is *notoriouſly negligent*

ligent of his Word and Troth, acts very imprudently; but, for that reason only can have no remedy, but shall be obliged. (2.) When a Bargain is made, and no *new Indications* appear of any knavish design, the same shall not be invalidated by any objection of Faults which were sufficiently known before the Agreement. For, that Reason which could not hinder the making of the Bargain, cannot excuse the fulfilling of it. (3.) Where *after* the Bargain made, it appears plainly that the other person intends to elude his part of the Contract, as soon as I have perform'd mine; here I cannot be forc'd to comply first, till I am secure of a performance on the other side.

XV. *Contracts through Fear.*

As for the other sort of *Fear* these Rules are to be observed, (1.) *Contracts* entred into through *Fear*, occasion'd by a *third* man shall be valid; for there is no defect in the other party to the Bargain, but he may recover of me what is his due, beside that he is well worthy a Recompence, if by his Interposition, he have deliver'd me from *Fear* of that other. (2.) All such *Covenants* as are made out of *Fear* or *Reverence* of our lawful Superiours, or by the *Awe* we have for those to whom we are

are very much beholden, ſhall be firm and good. (3.) Thoſe *Bargains* which are wrongfully and forcibly extorted from a man by the perſon to whom the Promiſe or Agreement is made, are invalid. For the *Violence* he unjuſtly uſes to ſet me under that *Fear* renders him uncapable of pretending to any Right againſt me on account of ſuch Action of mine. And whereas in other Caſes every man is bound to Reparation of what Wrong he ſhall do to another, this Reſtitution to which he is bound is underſtood as it were to take off any Obligation from ſuch Promiſe, ſince if what was promiſed were paid, it ought to be immediately reſtor'd.

XVI. *Conſent mutual.*

MOREOVER not only in Contracts, but in Promiſes the *Conſent* ought to be *reciprocal*; that is, both the Promiſer and he to whom the Promiſe is made muſt agree in the thing. For if the latter ſhall not *conſent*, or refuſe to *accept* of what is offered, the thing promiſed remains ſtill in the power of the Promiſer. For he that makes an *offer* of any thing, cannot be ſuppoſed to intend to *force* it upon one that is *unwilling* to receive it, nor yet to *quit* his own title to it; therefore when the other *denies* acceptance, he who prof-

proffer'd it loſes nothing of his Claim thereto. If the Promiſe was occaſion'd by a *Requeſt* before made, the ſame ſhall be accounted to oblige ſo long, as till ſuch Requeſt be expreſly *revok'd*; for in that caſe the thing will be underſtood to be *accepted beforehand*; provided yet that what is offer'd be proportion'd to what was deſir'd. For if it be not, then an *expreſs Acceptance* is requiſite; becauſe it may often do me no good to anſwer my Requeſt by halves.

XVII. *Impoſſible Engagements.*

As for the *Matter* of our Promiſes and Contracts, it is abſolutely neceſſary, that what we promiſe or make a bargain for be *in our power* to make good, and that ſo to do be not prohibited by any Law; otherwiſe we engage our ſelves either *fooliſhly* or *wickedly*. Hence it follows that *no man is oblig'd to do things impoſſible*. But if it be a thing which at the time of the Bargain-making was poſſible, and yet afterwards by ſome Accident without any fault of the Contracter became altogether impoſſible, the Contract ſhall be null, if there be nothing as yet done in it; but if one party have perform'd ſomewhat towards it, what he has advanced is to be reſtor'd to him, or an Equi-

Equivalent given; and if this cannot be done, by all means it is to be endeavour'd that he ſuffer no loſs thereby. For in Contracts that is principally to be regarded which was *expreſly* in the Bargain; if this cannot be obtain'd it muſt ſuffice to give an *Equivalent*; but if neither can this be had, at leaſt the *utmoſt care* is to be taken that the party undergo no Damage. But where any man ſhall *deſignedly* or by ſome very *blameable miſcarriage* render himſelf uncapable of making good his part of the Bargain, he is not only oblig'd to uſe his utmoſt endeavour, but ought alſo to be *puniſh'd*, as it were, to make up the amends.

XVIII. *Unlawful Engagements.*

IT is alſo manifeſt that we cannot ſet our ſelves under any obligation to perform what is *unlawful*. For no man can engage himſelf farther than he hath *lawful Authority* ſo to do. But that Legiſlator who prohibits any Action by a Law takes away all legal power of undertaking it, and diſables any man from obliging himſelf to perform it. For it would imply a Contradiction, to ſuppoſe, that from a Duty enjoin'd by the Laws ſhould flow an Obligation to do that which the ſame Laws forbid to be done. So that he

he tranſgreſſes who promiſes to do what is unlawful, but he is doubly a Tranſgreſſor who performs it. Hence alſo it follows, that neither are thoſe Promiſes to be kept, the obſervation of which will be *miſchievous* to him to whom they are made; becauſe it is forbidden by the Law Natural to do hurt to any man, even though he do fooliſhly deſire it. And if a Contract be made to do ſome *filthy* and *baſe* thing, neither ſhall be oblig'd to fulfil it. If ſuch filthy thing be done by one party purſuant to the Bargain, the other ſhall not be bound to give the Reward agreed for; but if any thing be already given on that account, it cannot be demanded again.

XIX. *Engagements concerning other men,* &c.

AND then, it is plain, that ſuch Engagements and Bargains as we ſhall make of what belongs to *other men* are altogether inſignificant, ſo far as they are not ours, but ſubject to the Will and Direction of others. But if I promiſe thus, "I will uſe my endeavour that ſuch a man (always ſuppoſing him to be one not abſolutely under my command) ſhall do ſo or ſo: then I am oblig'd by all methods morally poſſible, (that is, ſo far as the other can fairly requeſt of me, and as will conſiſt

conſiſt with Civility) to take pains to move that perſon to perform what is deſired. Nay we cannot promiſe to a third man *things* in our own poſſeſſion or *Actions* to be done by our ſelves, to which another has acquir'd a Right, unleſs it be ſo order'd as not to be in force till the time of that others Claim is *expir'd*. For he who by *antecedent* Pacts or Promiſes has already transferred his Right to another, has no more ſuch Right left to paſs over to a *third* perſon: And all manner of *Engagements* and *Bargains* would be eaſily eluded, if a man after having contracted with one, might be at liberty to enter a Treaty with another, wherein Diſpoſals ſhould be made contrary to the *firſt* Agreement, and with which it is impoſſible *this* ſhould conſiſt. Which gives foundation to that known Rule, *Firſt in time, prior in Right.*

XX. *Conditions various.*

BESIDE all which it is to be chiefly obſerved concerning Promiſes, that they are wont to be made *poſitively* and *abſolutely*; or *conditionally*, that is, when the Validity thereof relies upon ſome *Event* depending on Chance or the Will of Man. Now *Conditions* are either *poſſible* or *impoſſible*; and the former are ſubdivided into *Caſual* or fortuitous, which *we* cannot cauſe to be

or not to be; or *Arbitrary*, or such as are in the power of him to whom the Promise is made, that they are or are not comply'd with; or else *Mixt*, the fulfilling of which depends partly on the Will of the person receiving the Promise and partly on Chance. *Impossible Conditions* are either such as are *naturally* or *morally* so, that is, some matters are by the *Nature* of things not capable of being done; others are forbidden by the Laws and Rules of Morality; and as for these *impossible Conditions*, if we follow the downright way of judging concerning them, they bring a *Negative* sense upon the Promissory words; though 'tis true by Laws it may be provided, that if they are annex'd to a serious business, the Pact may remain good, rejecting these Conditions as if they had never been made; that so men may not have busied themselves about that which otherwise can signifie nothing.

XXI. *Mediatory Contracts.* Lastly, We promise and contract not only in our *own persons*, but oftentimes by the *Mediation* of other men, whom we constitute the *Bearers* and *Interpreters* of our Intentions: by whose Negotiations, if they deal faithfully by us in following the Instructions we gave, we are firmly oblig'd

oblig'd to thoſe perſons who tranſacted with them as our Deputies.

AND thus we have done with the *Abſolute* Duties of Man, and with thoſe by which we *paſs* to the other. The reſt do all preſuppoſe ſome Human Inſtitution founded upon a *Univerſal Agreement* and ſo introduc'd into the World; or elſe ſome peculiar State or Condition. And of this ſort of Inſtitutions there are three chiefly to be inſiſted on, to wit, *Speech* or *Diſcourſe*, *Propriety* and the *Value* of things, and the *Government* of Mankind. Of each of theſe and of the Duties ariſing therefrom we ſhall next diſcourſe. XXII. *Concluſion.*

CHAP. X.

The Duty of men in Diſcourſe.

HOW uſeful and altogether neceſſary an Inſtrument of Human Society *Diſcourſe* is, there is no man can be ignorant; ſince many have made that only an Argument to prove Man to be by Nature deſign'd for a *Social Life*. Now that a *lawful* and *beneficial uſe* may be made here- I. *General Rule.*

of for the good of the ſame Human Society, the Law of Nature has given men this for a Duty, *That no man deceive another either by Diſcourſe, or any other Signs which cuſtomarily are accepted to expreſs our inward meaning.*

II. *Uniform Signification of Words.*

BUT that the Nature of *Diſcourſe* may be more throughly underſtood, it muſt firſt be known, that there is a twofold Obligation reſpecting *Diſcourſe*, whether expreſs'd with the Voice or written in *Characters*. The firſt is, that thoſe who make uſe of the *ſame Language*, are oblig'd to apply ſuch certain *Words* to ſuch certain *Things*, according as *Cuſtom* has made them to ſignifie in each Language. For ſince neither any *Words* nor any particular *ſtrokes* form'd into *Letters* can *naturally* denote any certain *Thing* (otherwiſe all Languages and Characters for writing would be the ſame,) and hence the uſe of the Tongue would be to no purpoſe, if every man might call every *Thing* by what *Name* he pleaſed; it is abſolutely neceſſary among thoſe who ſpeak the ſame Language, that there be a *tacit Agreement* between 'em, that this certain Thing ſhall be ſo or ſo called and not otherwiſe. So that unleſs an *uniform Application* of *Words* be

be agreed upon, 'twill be impoſſible for one man to gather the Meaning of another from his Talk. By virtue then of this *tacit Compact* every man is bound in his common *Diſcourſe* to apply his Words to *that Senſe*, which agrees with the *receiv'd Signification* thereof in that Language; from whence alſo it follows, that albeit a mans *Sentiments* may differ from what he expreſſes in Words, yet in the Affairs of Human Life he muſt be look'd upon as *intending* what he *ſays*, though as was ſaid, perhaps his inward Meaning be the clean contrary. For ſince we cannot be inform'd of *anothers Mind* otherwiſe than by outward Signs, all uſe of Diſcourſe would be to no purpoſe, if by *mental Reſervation*, which any man may form as he liſts, it might be in his power to elude what he had declared by Signs uſually accepted to that end.

III. *Diſcourſe to be plain.*

THE other Obligation which concerns *Diſcourſe*, conſiſts in this, that every man ought by his *Words* ſo to expreſs to another his *Meaning*, that he may be plainly *underſtood*. Not but that it is in a Mans power to be *ſilent* as well as to *ſpeak*; and whereas no man is bound to tell every one what he bears in his mind; it

is neceſſary that there be ſome *peculiar Obligation* that ſhall engage him firſt to ſpeak, and then ſo to ſpeak as that another ſhall fully underſtand his Meaning. Such Obligation may ariſe from a *particular Compact*, or ſome *common Precept of the Law Natural*, or from the *Nature of the preſent Affair*, in which Speech is made uſe of: For oftentimes a *Bargain* is made expreſly with a man, that he ſhall diſcloſe to me all that he knows in ſome matter; as, ſuppoſe I deſired to be inſtructed in any Science: frequently alſo I may be *commanded* by ſome Precept of the *Law of Nature* to communicate my Skill to another, that by this means I may be helpful to him, or that I may ſave him from Miſchief, or that I may not give him ſome cauſe or occaſion of receiving a Harm: and laſtly, the *preſent Caſe* may require me to declare my Opinion in a Matter wherein another is concern'd; as it happens often in Contracts of the greateſt Importance.

IV. *Silence.* But becauſe it cannot *always* happen that upon any of theſe heads I am *oblig'd* to ſignifie my thoughts upon any matter, it is plain that I am not bound to diſcloſe in Words any more than another has a *Right* either

either *perfect* or *imperfect* to require. So that I may by holding my tongue lawfully conceal, what he has no just Claim to the knowledge of, or to the discovery whereof I lie under no Obligation, however earnestly it be desired.

V. *Counterfeit Discourse.*

NAY, Since *Speech* was not only ordain'd for the use of *others*, but *our own* benefit also: therefore whensoever my private Interest is concern'd and it occasions Damage to no body else, I may so order my Words, that they may communicate a Sense different from that which I bear in my mind.

VI. *Figurative Speech.*

Lastly, BECAUSE oftentimes those to whom we talk upon some matters may be so disposed, that from a *downright* and *plain Discourse* they would perceive the true State of the Case, which ought rather to be *concealed*, because a full knowledge would not procure the good end we drive at, but be a *detriment* to 'em; we may in such Cases use a *figurative* or *shadow'd* way of *Speech* which shall not directly represent our Meaning and plain Sense to the Hearers. For he who would and ought to benefit another, cannot be bound to attempt it after such a manner, as shall incapacitate him from obtaining his End.

VII. *Verity.* FROM what has been ſaid may be gather'd wherein that *Verity* conſiſts, for their regard to which good men are ſo much celebrated; to wit, that our *Words* do fitly repreſent our *Meaning* to any other perſon who *ought* to underſtand them, and which it is our *Duty* to *expreſs plainly* to him, either by a perfect or imperfect Obligation; and this to the end either that he upon knowing our minds may make to himſelf ſome Benefit thereby, or that he may avoid ſome undeſerv'd Evil, which he would incur upon a wrong underſtanding of the caſe. Hence by the by it is manifeſt, that it is not always to be accounted *Lying*, when even for the nonce a Tale is told concerning any thing in ſuch a manner as does not exactly quadrate with the Thing it ſelf, nor with our own Opinion of it; and conſequently, that the Congruity of *Words* with *Things*, which conſtitutes the *Logical* Verity, is not in all points the ſame with *Moral Truth*.

VIII. *A Lye.* ON the contrary that is rightly called a *Lye*, when our Words bear a different Signification from that which we think in our minds, whereas the perſon to whom we direct our Diſcourſe has a *Right* to underſtand the thing as it *really* is, and we are

are under an *Obligation* of making our Meaning *plain* to him.

FROM what is ſaid it appears, that thoſe are by no means chargeable with *Lying*, who entertain *Children* or the like with Fables and fictitious Diſcourſes for their better Information, they being ſuppoſed uncapable of the naked Truth. As neither are thoſe who make uſe of a *feign'd Story* to ſome *good end*, which could not be attain'd by ſpeaking the *plain Truth*; ſuppoſe, to protect an Innocent, to appeaſe an angry man, to comfort one who is in ſorrow, to encourage the fearful, to perſuade a nauſeating Patient to take his Phyſick, to ſoften the obſtinate, or to divert the evil Intention of another, and the like; or, if the Secrets and Reſolutions of a Community are to be kept from publick knowledge, we may raiſe falſe Rumors in order to conceal them, and to miſlead the importunate Curioſity of others; or, if we have an Enemy, whom by open force we cannot annoy, we may by way of Stratagem make uſe of any lying Tales to do him Miſchief. IX. *Untruth:*

ON the other ſide, if any man be *bound* in Duty to ſignifie *plainly* his *true meaning* to another, he is not without blame, X. *Part of the Truth, &c.*

blame, if he diſcover only a *part* of the Truth, or amuſe him with *ambiguous* Diſcourſe, or uſe ſome *mental Reſervation* not allow'd in the common Converſation of men.

CHAP. XI.

The Duty of thoſe that take an Oath.

I. *An Oath.* ALL men agree in the Opinion, that an *Oath* gives a great additional Confirmation to all our Aſſertions and to thoſe Actions which depend upon our Diſcourſe. An *Oath* is, *A Religious Aſſeveration, by which we diſavow the Divine Clemency, or imprecate to our ſelves the Wrath of God, if we ſpeak not the Truth.* Now when an All-wiſe and an Almighty *Witneſs* and *Guaranty* is invok'd, it cauſes a ſtrong Preſumption of the Truth, becauſe no man can eaſily be thought ſo wicked, as to dare raſhly to call down upon himſelf the grievous Indignation of the Deity. Hence it is the Duty of thoſe that take an Oath, *To take the ſame with awful Reverence, and religiouſly to obſerve what they have ſworn.* Now

II. *The End and Uſe.*

NOW the *End* and *Uſe* of an Oath is chiefly this, To oblige men the more firmly to ſpeak the Truth, or to make good their Promiſes and Contracts out of an awe of the Divine Being who is infinitely Wiſe and Powerful; whoſe Vengeance they imprecate to themſelves when they ſwear, if they wittingly are guilty of Deceit; whereas otherwiſe the Fear of what men can do may not be ſufficient; becauſe poſſibly they may hope to oppoſe or eſcape their Power, or to beguile their Underſtandings.

III. *Swearing by what.*

AND ſince nothing but the Deity is *Omniſcient* and *Almighty*, it is abſurd to ſwear by any thing which we do not ſuppoſe to be *inveſted with Divinity*, in this ſenſe, as to call upon ſuch Thing to be a Witneſs to the Oath and an Avenger of the Perjury: though 'tis true it may be common to *name* in Oaths *ſome certain thing*, by which a man may be ſaid to ſwear in this ſenſe, that he implores God, if he ſwears falſly, to execute his Vengeance upon that thing chiefly, as being moſt dear and of greateſt value to him who ſwears.

IV. *Forms how to be accommodated.*

IN Oaths the *Form* which is preſcribed, (by which the perſon ſwearing invokes God as a Witneſs and an Avenger,) is to

to be *accommodated to the Religion of the ſaid Swearer,* that is, to that Perſuaſion and Opinion of God which he is of. For 'tis to no purpoſe to make a man ſwear by a God, whom he does not *believe*, and conſequently does not *fear*. But no man ſuppoſes himſelf to take an Oath in any other Form nor under any other Notion than that which is conſonant to the Precepts of *his Religion*, which in his opinion, is the *true*. Hence alſo it is, that he who ſwears by *falſe Gods*, which yet himſelf takes to be true ones, ſhall however be oblig'd, and if he break his word, ſhall be accounted guilty of Perjury. Becauſe he ſet the general Notion of the Deity before his Eyes, 'tis no matter what ſingular Conceptions he might have thereof, and ſo having knowingly forſworn himſelf, he has as much as in him lay, violated the Reverence which is due to the Divine Majeſty.

VI. *Deliberation neceſſary.*

THAT an Oath may be *binding*, 'tis neceſſary it be taken with *Deliberation*; Whence he ſhall not be oblig'd by an Oath who merely *recites* it, or ſpeaking in the *firſt Perſon* dictates the concept formal Words thereof to another who is to ſay after him. But he who ſhall *ſeriouſly* behave

have himſelf as one that is about to *ſwear ſolemnly*, ſhall be oblig'd, whatſoever *mental Reſervations* he all the while may harbour in his mind. For otherwiſe all Oaths, nay all Methods of mutual Obligation by the Intervention of the plaineſt Significations would be of no uſe to humane Life, if any man by his *tacit Intention* could hinder ſuch an Act from producing thoſe Effects which were the very Deſign of its being done.

VI. *Oaths how obliging.*

OATHS do not of themſelves produce any new and particular Obligation, but are ſuperinduced upon an Obligation that was before valid, as an *Acceſſional Strength* to the *Engagement*. For always when we ſwear we have ſomewhat under our Contemplation, which not made good, we provoke the Divine Wrath upon our ſelves; and this 'twere abſurd to think, if it were not unlawful not to perform what is ſuppoſed, and conſequently not oblig'd ſo to do beforehand. Though ſometimes it muſt be allow'd that the *prime Engagement* and the *Oath* too may be compriſed in the ſame Sentence, as thus, *As God help me, I'll give you a hundred Pounds.* Where the Oath is not ſuperfluous, albeit 'tis added to a Promiſe that was valid of it ſelf.

ſelf. Becauſe though every good man believe a bare Promiſe to oblige, yet 'tis look'd upon to be the more firm when 'tis reinforc'd with an Imprecation of Vengeance from above upon a Failure. Hence it follows, that any Acts which have naturally a *flaw* in themſelves, cannot be made obligatory by the Acceſſion of an Oath; as neither can a *ſubſequent* Oath avoid a *former legitimate* Engagement, or annul that Right which *another* may claim thereby; thus a man would ſwear in vain not to pay another perſon what is juſtly due to him: Nor will an Oath be of any validity, where it appears, that 'twas made by the Juror upon *ſuppoſition* of a thing to be done which was not *really ſo*; and that he would not have ſo ſworn, had not he *believed* it to be done; eſpecially if he were *cajoled* into ſuch his Error by the *Craft* of him to whom the Oath was made: Neither ſhall he, who by ſetting me under *panick Fear* forces me to take an Oath, have any good title to require my Performance. Farthermore, an Oath ſhall have no Obligation upon me to do any *unlawful Act*, or to *omit* the performing any *Duty* enjoin'd by the Laws of God or Man. Laſtly, an Oath cannot *alter* the Nature

or

or Subſtance of the Contract or Promiſe to which it is annex'd; Hence it cannot oblige to *Impoſſibilities*. Again, a *Conditional* Promiſe by the addition of an Oath is not chang'd into *Poſitive* or *Abſolute*; and to a ſworn Promiſe, as well as to one without an Oath, *Acceptance* from the other party is requir'd to make it obligatory.

VII. *Puniſhment.*

BUT the taking of an *Oath* has this Effect among men, for the ſake of that Invocation of God which is therein made uſe of, whoſe Wiſdom no mans Cunning can elude, and who ſuffers not the man that mocks Him to eſcape unpuniſh'd; that not only a *heavier Puniſhment* is aſſign'd to him who forſwears himſelf, than to him who barely breaks his Word; but it puts them in mind to avoid all *Deceit* and *Prevarication* in the matters about which it is converſant.

VIII. *Strict Interpretation.*

NOT yet that *all Oaths* are to be conſider'd in their greateſt *Latitude*, but that ſometimes they muſt be interpreted in the *narroweſt ſenſe*, if ſo it be, that the Subject-matter ſeem to require it; for inſtance, if the Oath proceed from ſome *Malice* born to another, and ſo is not added to a *Promiſe*, but a *Threat*. Neither does

does an Oath exclude *tacit Conditions* and *Limitations*, provided they are such as plainly result from the Nature of the Thing; as suppose, I have sworn to give another whatsoever he shall request, if he ask what it is wicked or absurd for me to grant, I am not at all oblig'd. For he who indefinitely promises any thing to him that desires, before he knows what he is like to ask, presupposes the other will crave nothing but what is honest and morally possible, not things absurd or mischievous to himself or any body else.

IX. *Sense of an Oath.*

THIS is also to be noted, that in Oaths *the Sense of all the words thereof is to be such as he shall acknowledge himself to take them in, who accepts the Oath*, that is, *to whom* the other party swears. For the Oath is to be look'd upon to be made for *his* sake and not for the sake of the *Juror*. Whence it is *his* part to dictate the *Form* of the Oath, and this to do in words as *plain* as is possible; so that himself may signifie in what *Sense* he conceives them, and the person swearing may profess that he well understands his *Meaning*, and then those Words are *distinctly* to be express'd, that so no room may be left for Cavils or Shuffling.

X.

OATHS may most fitly be *distinguish'd* according to the *Use* they are applied to in Human Life. Some being annex'd to *Promises* and *Contracts*, thereby to procure a *strict* and *religious Observance* of the same; others are applied to the *Confirmation* of any mans *Assertion* concerning a Matter of Fact not altogether evident, and where the Truth cannot by other means be more conveniently search'd out; such are the Oaths administred to *Witnesses*, and those who are privy to another mans doings; sometimes also two *Adversaries* or *Litigants* may, with the consent of the Judge, or the Concession of one party, by taking such or such an Oath put an end to their *Law-Suit*. X. *Oaths divided.*

CHAP. XII.

Duties to be observed in acquiring Possession of Things.

WHEREAS such is the Condition of Mans Body, that it cannot be *supported*, and *preserved* from that which would destroy its Fabric, without the assistance I. *Other Creatures useful to Man.*

ſiſtance of *Things without* him; and whereas by making uſe of *other Creatures* his Life may be rendred much more *comfortable* and *eaſie*; we may ſafely gather, that it is the Will of the ſupreme Moderator of the World, that he be allow'd to apply ſuch other Creatures to his Service, and that he may even deſtroy many of them for his Occaſions. Neither does this hold as to *Vegetables* only which have no Senſe of the loſs of their beings; but it reaches even the *innocent Animals*, which though they die with Pain, yet are kill'd and devour'd by men for their Suſtenance without Sin.

II. *Poſſeſſion introduced.* FARTHER, all theſe *outward Things* are underſtood to have been left in the beginning by God *indifferent to the claim of all men*, that is, ſo that none of them were the Propriety of this man rather than that. Not but that Men were at liberty to *diſpoſe* Things ſo, as ſhould ſeem requiſite to the Condition of Mankind, and the Conſervation of Peace, Tranquillity and good Order in the World. Hence it was that at firſt, while the Human Race was but of a ſmall Number, it was agreed that *whatever any one did firſt ſeize ſhould be his, and not be taken from him by another*,

ther, with this Proviſion, that he ſhould apply it to his own uſe; and leave the *Body* or *Thing*, which *produc'd* it, ſtill free from being claim'd by any particular man. But afterward, when Mankind was multiplied, and they began to beſtow *Culture* and *Labour* upon thoſe things which afforded them Food and Raiment; for the prevention of Quarrels, and for the ſake of good Order, thoſe *Bodies* or *Things* alſo, which produc'd ſuch Neceſſaries, *were divided among particular men*, and every one had his proper Share aſſign'd him, with this general Agreement, that *Whatſoever in this firſt Diviſion of Things, was yet left unpoſſeſs'd, ſhould for the future be the Propriety of the firſt Occupant.* And thus God ſo willing, with the previous Conſent or at leaſt by a tacit Compact of Man, *Propriety or the Poſſeſſion of Things* was introduc'd into the World.

III. *Propriety what.*

Now from *Propriety* flows a Right, whereby the Subſtance, as it were, of any thing ſo belongs to One, that it cannot after the *ſame* manner *wholly* belong to Another. From whence it follows, that we may at our own pleaſure diſpoſe of thoſe things which are our Propriety, and hinder all other people from the uſe of them;

unleſs by Agreement they have procur'd from us ſome ſpecial Right. Although in Communities it does not always happen that Proprieties are kept ſo unmixt and abſolute, but are ſometimes circumſcribed and limited by the Municipal Laws thereof, or by Orders and Agreements of men among themſelves. But when any certain Thing belongs jointly to more perſons than one after the ſame manner, then it is ſaid to be *common* to thoſe ſeveral Perſons.

All things not poſſeſs'd.

IV. BUT as Things did not *all at once* become the Poſſeſſions of men, but ſucceſſively, and according as the State of Mankind ſeem'd to require; ſo it was not neceſſary neither that *every Thing* in the World ſhould be claim'd by one man or other, but, the Peace of Mankind being preſerv'd, *ſome things may, and ſome things ought to continue, as at the beginning, common to all.* For there are Things which are, 'tis true, advantageous to man, but ſince they are *inexhauſtible*, ſo that every man may have the Benefit of 'em, and yet no ſingle perſon can have the leſs Uſe of them, it would be fooliſh and to no purpoſe for any one to encloſe or lay claim to 'em. Such are the Light of the Sun,

Sun, the Air, the running Water, and the like: Among which alſo may be accounted the vaſt Ocean flowing between great Continents, for ſo much of it as is very far diſtant from the Shore. Becauſe 'tis not only more than ſufficient for the promiſcuous uſe of all men, but 'tis morally impoſſible for any ſingle Nation to guard it. For where a Thing is of that Nature, that other men cannot by any means be hinder'd from the Uſe of it, it is not only in vain to divide or lay claim to it, but it is apt to give occaſion for inſignificant Quarrels.

V. *Twofold Propriety.*

THE Methods of acquiring Property are either *Original* or *Derivative*; Thoſe *deduce* Propriety from the beginning of things; Theſe *transfer* Propriety already acquired from one to another. The former may be again ſubdivided into thoſe which are *ſimply ſuch* as give immediate Poſſeſſion of ſome particular thing; and, thoſe which have a regard to ſome *other matter*, whereby ſome Improvement is made of what we before poſſeſs'd.

VI. *Premier Seiſin.*

AFTER it had been covenanted among Mankind that Things ſhould be *appropriated* to this or that man, it was alſo agreed, that what things ſoever had *not*

fallen within that *first Diviſion*, ſhould thereafter become the Propriety of the *firſt Occupant*, that is, of him, who before any other, ſhould actually ſeize it with a deſign of poſſeſſing the ſame. So that even at this time the Original Method of acquiring Propriety in many things is only *Premier Seiſin* or the firſt Occupancy. After this manner Titles are made to deſolate Regions, which no man ever claim'd, which become his who *firſt enters* upon 'em with an Intention of making them his own, provided he cultivate 'em and aſſign *Limits*. how far he propounds to occupy. But when any number of men *jointly* poſſeſs themſelves of any tract of Land, 'tis cuſtomary to aſſign to each Member of the Company a *Share*, and to account what is left undivided to belong to the Society in *common*. By this *firſt* Occupancy alſo are gain'd all the wild Beaſts, Birds, and Fiſhes living in the Sea, Rivers or Lakes thereunto appertaining; as well as what by the Sea ſhall be thrown upon the Shore; except *particular Laws* inhibit the promiſcuous Seizure of the ſame, or aſſign them to ſome certain Claimant. Theſe if we would make our own, we muſt actually *ſeize* them and take 'em into our *Poſſeſſion*. By this

this Occupancy also we may rightfully acquire possession of things whereof the *Propriety* which any other person could have is *extinct*. As for instance, in things which are cast away with intention of the Owner not to have them any more, or in things which at first we lost unwillingly, but in time relinquish'd and fore-went. To which may be added what the Lawyers call *Treasure trove*, or Money found, the Owner whereof is not known, which goes to the Finder, except by the special Laws of a Countrey it be otherwise provided.

VII. *Accessional Improvements.*

MOREOVER there are many things capable of being possess'd, which continue not always in the same state, but some after several manners *increase* of themselves or enlarge their Substance; to others some *external Additions* are made; many bring forth *Fruit*, and not a few by Mans Labour and Workmanship admit of *Improvement*. All these are comprised under the head of *Accessional* Advantages, and may be divided into two sorts; for *some* without the help of Man accrew from *Nature* alone; while *others* either wholly or in part are to be attributed to *Human Industry*. Concerning both which this is to be the Rule, To him who is the Owner of

the *Thing* to the ſame belong the *Improvements* and *Acceſſional* Advantages; and he who has form'd any Matter of his own into ſuch or ſuch a *Faſhion*, is Owner of that *Form* or *Faſhion*.

VIII. *Services.* BUT Caſes often happen, where either by Contract or ſome different way, another man may get a Right to receive a certain *Profit* out of Things that are *ours*, or to prohibit us the uſing even of what is *our own* to *every* purpoſe. Theſe Rights are wont to be called *Services*, and they are of two ſorts, either *Perſonal*, where the Advantage from what belongs to another man comes to the Perſon *immediately*; or *Real*, where ſuch Benefit is receiv'd from that which is anothers by the means or *Mediation* of that which is ours: among which are accounted the Right of receiving profits, of making uſe of what is anothers, of living in ſuch a place, of commanding the work of Servants. The *Real Services* are again ſubdivided into ſuch as regard the *City* or the *Country*: the *firſt* ſort are the ſupporting my Neighbours Houſe or Wall which cannot but bear upon mine, affording the benefit of Lights, not ſtopping them up, allowing Proſpects, carrying off the Rain-Water, and the like: the

the *latter* are liberty of Paſſage for men or Cattel, leave to derive or draw Water, or to water Cattel, or to graze 'em for a time, &c. All which Services have been introduc'd for the preſervation of good *Neighbourhood.*

IX. *Derivative Propriety.*

AMONG the *derivative* Methods of acquiring Propriety, ſome are when by the Diſpoſal of the Law Things are devolv'd from one upon another; others are when Poſſeſſion is transferred by the *former Owner*; and this ſometimes affecting the ſame in *whole*, and ſometimes in *part.*

X. *Inheritance.*

THE Whole of an Eſtate by the death of the former Owner generally paſſes by *Succeſſion* to the *next Heir* of the Inteſtate. For it being repugnant to the common Inclinations of Men, and altogether diſſerviceable to the Peace of Mankind, that ſuch Poſſeſſions ſhould be accounted as *foregone* and *relinquiſh'd*, and as left to be a Prey to any one who ſhall ſeize them, which ſuch Owner had while he lived, taken ſo much care and pains to get: Hence, by the Dictates of *Reaſon* it has obtain'd among all civiliz'd Nations, that if any man dies not having *diſpoſed* of what he had, the ſame ſhall *devolve* to thoſe, whom according to the *general Inclination* of

of Mankind he must be thought to have holden most dear to him. And these, regularly consider'd, are those who *descend* from us, as our *Children*, &c. after them those who are of the same *Consanguinity*, according as they are nearly allied. And tho there may be many, who either for having receiv'd *Benefits* or from some *particular Affection* have a greater Respect for persons not at all by *Blood* related to them, than for the neareſt *Kin*; yet for Peace sake it is necessary without taking notice of the peculiar Case of some Few, rather to follow the *universal Propensity* of Man, and to observe that *Method* of Succession which is most plain and least obnoxious to *Controversies*; which would be very apt to arise, if the *Benefactors* and *Friends* of the deceased might be admitted to contest Succession with the next of *Kin*. So that if a man has a mind to prefer those to whom he stands oblig'd by kindnesses, or such as he has on any other account a Love for, he is to make such Dispoſals openly and expresly.

XI. *Heirs.* WHENCE it follows, that the next *Heirs* to any man are his *Children*, which are given by Nature to Parents to be carefully bred and educated, and for whom every

every Parent is ſuppoſed to wiſh a moſt plentiful Proviſion, and to deſign to leave whatſoever he ſhall die poſſeſs'd of. But by *Children* are *chiefly* underſtood ſuch as are born in lawful Matrimony: For to theſe much Favour is due from *Reaſon* itſelf, from the *Honour* and *Decency* of the Married Life, and from the *Laws* of all Civiliz'd Countries, above the *Illegitimate*. All which Conſiderations obtain yet with theſe Exceptions, to wit, unleſs the Father has ſufficient Reaſon not to *acknowledge* ſuch a one for his Son, or *diſinherits* him for ſome heinous Wickedneſs. In the ſame caſe with *Children* are alſo to be conſidered Progeny of *lower degrees*, as Grand-Children, whom the Grandfather is bound to bring up, and who have Right to ſhare his Inheritance together with the Uncles on both ſides; and this, becauſe there can be no reaſon, that the Miſery of loſing their deceaſed Parent ſhould be aggravated by being excluded from their Proportion of Inheritance in the Eſtate of their Grandfather. Upon failure of *Heirs deſcendent*, 'tis reaſonable the Goods of Children revolve to their *Parents*; and that to thoſe who are Fatherleſs, Motherleſs and Childleſs their *Brethren* ſhould ſucceed; and upon

upon default of theſe the *next of kin* to the deceaſed ought to inherit. Though in order to prevent Contentions, to which on this ſcore great occaſions are frequently given, and that this matter may be ſettled for the publick Good, in moſt Communities the *Order of Succeſſion* is found to be accurately ſtated; and ſuch Directions of the Government it is moſt ſafe for every private man to follow in this Caſe, unleſs very weighty Cauſes force him to the contrary.

XII. *Laſt Will.* THE Whole alſo of an Eſtate may, by an Act of the former Proprietor upon his Death be paſs'd away by his *Laſt Will* and *Teſtament*; for this has been allow'd by moſt Nations that for ſome kind of Eaſe to our Thoughts of Mortality, a man yet alive may, if Death happen, transfer what he has of outward Goods to ſome perſon that he loves beſt. Now whereas in the moſt antient times it ſeems to have been cuſtomary, that the dying man upon the approach of his End *openly declared* his Heirs, and with his own hands *deliver'd* ſuch or ſuch Portions into the hands of them who were to receive; yet afterwards for good reaſons, another manner of *Bequeathing* was approved by many

ny People; to wit, that a man may at any time, when himſelf thinks good, make his own Will, and either declare it *openly*, or keep it *cloſe* in Writing, which Will alſo he may at his pleaſure *alter*, and of which the Heirs he has named or written down cannot make any uſe till the Teſtator be *dead*. Not but that ſuch *Laſt Wills* of how much authority ſoever they are among men, yet are to be ordered with Conſideration of the Parties *various Relations* to men and of the Good of the Community; the Neglect whereof has given occaſion for the *Laws* oftentimes to provide and give Rules for making them; from which preſcribed *Directions*, if any man depart, he has no reaſon to *complain* that regard was not had to his *Laſt Will*.

XIII. *Gift.*

WHILE men are yet living Things are transferred by the Act of the firſt Proprietor, either *Gratis* or *Freely*; or elſe by the Mediation of ſome *Contract*. The former way of Transferring is called *Gift*; and of the latter, which is *Contracting*, we ſhall ſpeak hereafter.

XIV. *Forcible Poſſeſſion.*

SOMETIMES alſo Things change their Owner without the Conſent and even *againſt the Will* of the ſame Owner; and this is moſtly in Communities by way of

of *Fine*, when ſometimes *all* the Eſtate of a Convict, ſometimes ſuch a *Portion* only ſhall be forfeited, and the ſame ſhall be given either to a private perſon who has ſuffer'd wrong, or applied to the uſes of the Publick. So in *War* Goods are *forcibly* taken from the Poſſeſſor, who parts with them very *unwillingly*, by an Enemy who is too ſtrong for him, and become the true *Propriety* of the Seizer; not but that the firſt Owner has ſtill a Right with a greater force, whenever he can, to recover 'em, ſo long as till by ſubſequent Treaties of Peace he does in effect renounce his Pretences thereto.

XV. *Preſcription.* BESIDE theſe there is yet a peculiar way of acquiring Propriety, called *Uſucaption*, or *Preſcription*; by which a man who without Violence, Knavery or Injuſtice has poſſeſs'd himſelf of any thing, and enjoy'd the ſame quietly and without interruption a long time, is at length accounted the abſolute *lawful Owner* thereof; inſomuch that he ſhall be able to keep off any *antient Claimant* who ſhall pretend a Title thereto. And the Reaſon of admitting this ſort of Right, was, that any man muſt be adjudg'd to have *relinquiſh'd* and *forgone* a Thing which he has

has time out of mind neglected to aſſert to himſelf, whereas occaſions for ſo doing can hardly be ſuppos'd to be ſo long wanting; and partly for the ſake of Peace and Tranquillity, which require that Poſſeſſions have ſome time or other in which they may be for ever *fix'd* and *ſettled* beyond diſpute. And this ſtill the rather, becauſe it is much harder and more grievous to be turn'd out of a Poſſeſſion honeſtly acquir'd, than never to enjoy one that was loſt a great while ago, when all hankering Thoughts after the ſame have been long diſcontinued. But in Communities it is very neceſſary for the prevention of Controverſies, that certain *limited Times* be ſet, which ſhall make a good *Preſcription*, according to Reaſon and Convenience.

CHAP.

Chap. XIII.

The Duties which naturally reſult from Mans Property in Things.

I. *Quiet Enjoyment.*

1. PROPRIETY in Things being introduced among men, theſe Duties from thence naturally ariſe, 1. *That every man is oblig'd to permit another, who is not a declar'd Enemy, quietly to enjoy what things ſoever are his, and neither by Fraud or Violence to ſpoil, embezle or convert them to his own uſe.* Whereby Theſts, Rapines and the like Crimes, which tend to the invading and encroaching upon other mens Properties, are forbidden.

II. *Reſtitution.*

2. WHEN *any thing that belongs to another comes fairly to our hands without any trick or fraud of ours, and we have ſtill the ſame in poſſeſſion, we are oblig'd to take care as far as in us lies that it be returned to its right Owner.* Not that we are bound to reſtore it at our own charges, but if we have been at any coſt in preſerving it, we may juſtly demand to be reimburs'd, or ſtop the Thing till ſatisfaction be made. And in ſuch a Caſe only

we

we are oblig'd to *Reſtitution*, when we certainly *know*, that the Thing does really and truly belong to another. For then we ought to give notice, that the ſame is in our Poſſeſſion, and that we do not hinder the Right Owner from receiving it. Not but that, if we have purchaſed any thing juſtly and lawfully, we our ſelves are no ways oblig'd to call our own Title in queſtion, and to make Enquiry by Proclamation, as 'twere, whether any one can lay claim thereto. And this *Duty* is ſuperior to any *private Contracts*, ſo as in many Caſes to bar their Obligation. As for inſtance, if a *Thief* does truſt and depoſite with me upon my Promiſe of Redelivery, ſomewhat that he has ſtollen, I being altogether ignorant of the matter; after which the *Right Owner* appears, the ſame is to be reſtor'd to *him* and not to the *Thief*.

III. *Reſtitution, part conſum'd.*

BUT *if any thing belonging to another, which yet we came by fairly and honeſtly, be waſted and conſum'd, 'tis our Duty to reſtore only ſo much to the Owner as we have received Profit by it.* Becauſe we have no Right to reap Advantage from anothers undeſerved Loſs.

IV. *Conclusions. First.* FROM these Premisses we may deduce the following Conclusions, 1. *A Presumptive Owner*, (or one who without any Covin on his part becomes the Possessor of what belongs to another man) *is not oblig'd to make any Restitution, if the Thing perishes*; because neither the thing it self is in his power, neither has he receiv'd any Gain or Advantage thereby.

V. *Second.* 2. SUCH a Presumptive Owner is oblig'd *to make Restitution, not only of the Thing it self, but also of the Fruits and Profits, which are in being at the time.* For to whomsoever the *Thing* really belongs, to the same likewise the *Profits* and *Advantages* thence arising do accrew. Nevertheless it is lawful for the Possessor to deduct what charges he has been at upon the Thing, or upon its Culture and Improvement, by means whereof it has produc'd those Fruits and Profits.

VI. *Third.* 3. A Presumptive Owner is oblig'd *to make Restitution of the Thing, and of the Fruits and Profits of it that are consumed, if otherwise he would have consum'd as much of his own, and can recover the value thereof from him of whom he received Possession.* For otherwise he would enrich himself, whilst by spending what belongs to another, he spares his own. 4. A

4. A Preſumptive Owner is not oblig'd *to make good the Fruits and Profits which he might have made of the Thing in his poſſeſſion, but neglected ſo to do*: Becauſe he has not the Thing nor ought in lieu thereof, and he muſt be conſider'd, to have done by it as he would have done by that which was *truly* his own. VII. *Fourth.*

5. IF a Preſumptive Owner *makes a Preſent or Donation of any thing belonging to another, which was given to himſelf, he is not bound to reſtore it*; unleſs he had been *oblig'd* in Duty to have given the like Value. For in ſuch a Caſe he would be a Gainer, by ſaving what he muſt have given of his own. VIII. *Fifth.*

6. IF a Preſumptive Owner *makes over what he has purchaſed of another man upon a valuable Conſideration, he is not bound to make Reſtitution*; unleſs ſo far as he has made any advantage by it. IX. *Sixth.*

7. A Preſumptive Owner is oblig'd *to reſtore that which belongs to another, though he bought it upon a valuable Conſideration*; nor can he demand of the *true Owner* the Price he paid for it, but only of him from whom he had it; unleſs ſo far as the Charges which the Owner muſt neceſſarily have been at, in regaining the poſſeſſion of X. *Seventh.*

his Right; or that otherwiſe he did freely promiſe ſome Reward for the Recovery.

XI. *Things found.* WHOSOEVER happens to *find* any thing belonging to another, which, 'tis probable, the right Owner loſt againſt his Will, he cannot take it up with an intention to detain it from him when he requires it. But if the Owner appear not, he may fairly keep it himſelf.

CHAP. XIV.

Of the Price and Value of Things.

I. *Price.* AFTER *Propriety* was introduc'd into the World, all Things not being of the ſame *Nature*, nor affording the ſame *Help* to Human Neceſſities; and every man not being ſufficiently provided with ſuch things as were neceſſary for his Uſe and Service, it was early brought into practice among men to make *mutual Exchanges* of one Thing for another. But becauſe it very often happened, that Things of a *different Nature* and *Uſe* were to be transferred; leſt either party ſhould be

be a loſer by ſuch *Exchanging*, it was neceſſary by a common Agreement and Conſent among themſelves to aſſign to Things ſuch a *Quantity* or *Standard*, by which thoſe *Things* might be compar'd and reduc'd to a Balance between each other. The ſame alſo obtaining as to *Actions*, which it was not thought good ſhould be done *gratis* by one man for another. And this *Quantity* or *Standard* is that which we call *Price* or *Value*.

II. *Price two-fold.*

THIS *Price* is divided into *Common* and *Eminent*; The *firſt* is in *Things* or *Actions* which come within the compaſs of *ordinary Commerce*, according as they afford either Uſefulneſs or Delight to Mankind. But the other is in *Money*, as it virtually contains the Value of all Things and Works, and is underſtood to give them their common Eſtimate.

III. *Common Value.*

THE natural Ground of the *Common Value*, is that *Fitneſs* which any Thing or Action has for ſupplying, either mediately or immediately, the *Neceſſities* of Humane Life, and rendring the ſame more *eaſie* or more *comfortable*. Hence it is we call thoſe things which are not of any *Uſe* to us, *Things of no value*. There are nevertheleſs ſome *things moſt uſeful* to Humane

mane Life, which are not understood to fall under any *determinate Price* or *Value*; either because they are or ought to be exempted from Dominion and Property, or because they are not capable of being exchang'd, and therefore cannot be traded for; or else, because in Commerce they are not otherwise regarded than as Appendages to be supposed of course to belong to another Thing. Besides also when the Law of God or Man places some Actions above the reach of Commerce, or forbids that they should be done for a Reward, it is to be understood that the same Laws have set them without the bounds of Price or Valuation. Thus the upper Regions of the *Air*, the *Sky*, and the *Heavenly Bodies*, and even the vast *Ocean* are exempt from Human Property, so that no Rate or Value can be put upon them. So there is no Rate or Price to be set upon a *Freeman*, because Freemen come not within the compass of Commerce. So the clear Light of the *Sun*, the serene and pure *Air*, the delightful Aspect of the *Earth*, so far only as it pleases the Sight, the *Wind*, the *Shade*, and the like considered separately and in themselves, have no Price or Valuation; since men cannot enjoy these things

things without the Uſe of the *Earth*. Nevertheleſs they are of great importance in advancing or leſſening the Price of Countries, Lands or Farms. So likewiſe 'tis unlawful to ſet any Rate or Price on *Sacred Actions*, to which any moral Effect is aſſign'd by *Divine Inſtitution*; which Crime is call'd *Simony*. And it is great Wickedneſs in a *Judge* to expoſe *Juſtice* to Sale.

IV. *Enhauncing or Debaſing a Price.*

Now there are various Reaſons why the Price of one and the ſame thing ſhould be *encreas'd* or *diminiſh'd*, and why one thing ſhould be preferr'd before another, tho this may ſeem to be of *equal* or *greater Uſe* to Humane Life. For here the *Neceſſity* of the thing or its extraordinary *Uſefulneſs* is not always regarded; but on the contrary we ſee thoſe things are of the leaſt account or Value, without which Human Life is leaſt able to ſubſiſt; and therefore not without the ſingular Providence of Almighty God, *Nature* has been very *bountiful* in providing *plentiful* ſtore of thoſe things. But the *Rarity* or *Scarceneſs* of Things conduces chiefly to the enhanſing their Value; which is the more look'd upon, when they are brought from remote Countries. And hence the wanton Luxury of Mankind has ſet *extravagant Rates*

upon many things, which Humane Life might very well be without, for inſtance upon *Pearls* and *Jewels*. But the Prices of Things, which are of *daily Uſe*, are then chiefly rais'd where the *Scarcity* is join'd with the *Neceſſity* or *Want* of them. The Prices of *Artificial Things*, beſides their *Scarceneſs*, are for the moſt part enhans'd by their ingenious *Contrivance* and Curioſity of *Art*, that is ſeen in them, and ſometimes by the Fame and Renown of the Artificer, the Difficulty of the Work, the want of Artiſts in that way, and the like. The Prices of *Works* and *Actions* are rais'd by their Difficulty, Neatneſs, Uſefulneſs, Neceſſity, by the Scarcity, Dignity and Ingenuity of the *Authors* of them; and laſtly by the Eſteem and Reputation, which that Art has gotten in the World. The *Contrary* to theſe are wont to *diminiſh* the Price of Things. Sometimes again there may be ſome Certain Thing, which is not generally much eſteem'd, but only by ſome *Particular Perſons*, out of a Peculiar Inclination; for Example, becauſe he, from whom we had it, is mightily *belov'd* by us, and that it was given as a *Token* of his Particular Affection to us; or becauſe we have been *accuſtom'd* thereto, or becauſe

it

it is a *Remembrancer* of ſome remarkable Accident, or becauſe by the help thereof we have eſcap'd any extraordinary *danger*, or becauſe the Thing was made by *Our ſelves*. And this is called *the Eſtimate of ſingular Affection*.

V. *Particular Prices. Legal.*

But there are other Circumſtances likewiſe to be conſider'd in *ſtating* the Rates and Prices of *Particular Things*. And among thoſe indeed, who live in a Natural Independence on any other, the Prices of Particular Things are determin'd no otherwiſe, than by the *Will* of the *Perſons Contracting*; ſince they are entirely at their own liberty to make over or to purchaſe what they pleaſe, nor can they be controlled in their Dealings by any ſuperior Authority. But in States and Governments the *Prices of Things* are determin'd two ſeveral ways. The *Firſt* is by an *Order* from the *Magiſtrate* or ſome *Particular Law*; the *ſecond* is by the Common *Eſtimate* and *Judgment* of Men, or according as the *Market* goes, together with the *Conſent* and *Agreement* of thoſe who Contract among themſelves. The former of theſe by ſome is call'd the *Legal*, the other the *Vulgar Price*. Where the *Legal Rate* is fix'd for the ſake of the *Buyers*, which it is

is for the moſt part, it is not lawful for the *Sellers* to exact *more*; though they are not forbidden, if they will, to take *leſs*. So where the Rate of any *Labour* or *Work* is tax'd by the Publick Magiſtrate for the ſake of thoſe who have occaſion to Hire, it is not lawful for the Workman to demand *more*, though he be not prohibited to take *leſs*.

VI. *Vulgar Price.* BUT the *Vulgar* Price, which is not fix'd by the Laws, admits of a Certain *Latitude*, within the Compaſs whereof more or leſs may be and often is either taken or given, according to the *Agreement* of the Perſons *Dealing*; which yet for the moſt part goes according to the Cuſtom of the *Market*. Where commonly there is regard had to the Trouble and Charges, which the Tradeſmen generally are at, in the bringing home and managing their Commodities; and alſo after what manner they are bought or ſold, whether by Wholeſale or Retail. Sometimes alſo on a ſudden the Common Price is alter'd by reaſon of the *Plenty* or *Scarcity* of *Buyers*, *Mony* or the *Commodity*. For the *Scarcity* of Buyers and of Mony, (which on any particular account may happen,) and the plenty of the Commodity may be a means

of

of *diminiſhing* the Price thereof. On the other hand the Plenty of Buyers and of Money, and the Scarcity of the Commodity *enhanſes* the ſame. Thus as the value of a Commodity is leſſened, if it *wants* a Buyer; So the Price is augmented, when the Poſſeſſor is ſolicited to ſell what otherwiſe he would not have parted with. Laſtly, it is likewiſe to be regarded, whether the Perſon offers *ready Money*, or deſires *Time* for Payment; for allowance of *Time* is part of the *Price*.

VII. *Price eminent.*

But after Mankind degenerated from their primitive Simplicity, and introduc'd into the World ſeveral kinds of Gaining; it was eaſily diſcern'd that that *Common* and *Vulgar* Price was not ſufficient for the diſpatching the Buſineſs of Men and for the carrying on of Commerce, which then daily encreas'd. For at firſt all kind of Trading conſiſted only in *Exchanging* and *Bartering*, and the Labours of others could no otherwiſe be valued than by Work for Work, or ſome Thing given in hand for Recompence. But after Men began to deſire ſo many ſeveral things for *Convenience* or *Pleaſure*, it was not eaſie for every one to become maſter of That which another would be willing to take in

in Exchange, or which might be of equal value to the Things he wanted from him. And in Civiliz'd States or Societies, where the Inhabitants are distinguish'd into *several Stations*, there is an absolute necessity there should be different Degrees and Sorts of Men, which, if that simple and plain way of *bartering* of *Things* and *Works* had been still in use, could not, or at least not without great difficulty support themselves. Hence most Nations, which were pleased with a more sumptuous way of living, thought fit by Publick Consent to set an *Eminent Price* or *Value* upon some Certain Thing, whereby the *Common* and *Vulgar* Prices of other Things should be measured, and wherein the same should be virtually contained. So that by means of this *Thing* any one may purchase to himself whatsoever is to be sold, and easily manage and carry on any kind of Traffick and Bargain.

VIII. *Gold, Silver, &c.*] FOR this purpose most Nations chose to make use of the Nobler kind of *Metals*, and such as were not very Common. Because these being of a very compacted substance, they cannot easily be *worn out*, and admit of being *divided* into many minute Parts; nor are they less proper to be

kept

kept and *handled*; and for the *Rarity* of 'em are equivalent to many other things. Although sometimes for Neceſſity, and by ſome Nations for want of *Metals*, other *Things* have been made uſe of inſtead of *Money*.

IX. *Coin.*

MOREOVER, in Communities it is only in the power of the Chief Magiſtrates to aſſign the *Value* of *Money*, and thence *Publick Stamps* are wont to be put upon them. Nevertheleſs in the aſſigning thereof, reſpect is to be had to the Common Eſtimate of the *Neighbouring Nations*, or of thoſe with whom we have any *Traffick* or *Commerce*. For otherwiſe, if the State ſhould ſet too *high a Value* on their Money, or if they ſhould not give it a *juſt* and *true Allay*, all Commerce with Forein Nations, which could not be carried on by *Exchange*, or *Barter* alone, would be at a ſtand. And for this very Reaſon the Value of Money is not raſhly to be *alter'd*, unleſs a very great Neceſſity of State require it. Though as Gold and Silver grows more plentiful, the *Value* of *Money* in Compariſon to the Price of Land, and things thereon depending, is wont as it were inſenſibly and of it ſelf to grow lower.

CHAP.

Chap. XV.

Of those Contracts in which the Value of Things is presupposed, and of the Duties thence arising.

I. *Pacts and Contracts.* A *PACT* or *Agreement* in general is the Consent and Concurrence of Two or more in the same *Resolution.* But because oftentimes simple *Agreements* are contradistinguish'd to *Contracts*, the Difference seems chiefly to consist herein, that by *Contracts* are understood such Bargains as are made concerning *Things* and *Actions*, which come within the Compass of *Commerce*, and therefore suppose a *Property* and *Price* of Things. But such Covenants as are concluded upon, about other Matters, are call'd by the Common Term of *Pacts* or *Agreements*. Although even to some of these is promiscuously given the Name of *Pacts* and *Contracts*.

II. *Contracts of two sorts.* Contracts may be divided into *Gratuitous* and *Chargeable*. The former sort affords *gratis* some Advantage to one of the Parties Contracting, as is a Commission, a Thing Lent, or Deposited. The other

other obliges both Parties reciprocally to the *performance* of ſome certain *Condition.* For in theſe Contracts ſomething is perform'd or deliver'd with intention, that an *Equivalent* thereto may be receiv'd.

III. *Equality.*

Now all *Chargeable Contracts* naturally imply an *Equality* in 'em, that is, that each of the Perſons Contracting receive of the other ſo much in value as himſelf parts with; and if any *Inequality* happens, that Party who receiv'd too little, may lawfully demand what is wanting to be made up, or elſe he is at liberty wholly to throw up the Contract. And this is chiefly practis'd in Governments and Societies, where the Prices of Things are aſcertain'd either by Law or the Cuſtom of the Market. But for the better ſtating and determining this Equality, it is requiſite, that the Contracting Parties do well underſtand the Thing about which they are driving a bargain, with all thoſe of its Qualifications and Circumſtances that are of any Conſideration. And hence it is, that He who is about to transfer any Thing to another by Contract, ought to lay before him not only the Good Qualities of the Thing, but alſo its Faults and Defects. For without this a *Juſt Price* cannot be put upon it.

Not

Not that 'tis neceſſary to declare ſuch Circumſtances, as no ways affect the Thing it ſelf; nor is there any occaſion to take notice of Faults which are already known on *both ſides*. For he that *wittingly* buys any Thing that is amiſs, muſt take the blame upon himſelf.

IV. *Defects to be made good.* NOW in theſe Contracts an *Equality* is ſo far to be regarded, that although nothing at all was conceal'd or diſſembled; yet if afterwards any Inequality be found out, even though neither of the Parties Contracting were blameworthy, either for that the Defect lay altogether hid and undiſcover'd, or that there was ſome miſtake in the Price, ſuch like things muſt be rectifi'd, and he who has too much, muſt allow to him that wanted to make the Bargain good. Although for the avoiding a multitude of unneceſſary Suits, the Laws of every Country have here chiefly made Proviſion againſt the moſt *Notorious Abuſes*; as to the Reſt, ſuppoſing every one will be careful in his own Concerns.

V. *Deputation or Commiſſion.* GRATUITOUS Contracts are chiefly Three, a *Commiſſion*, a Thing *Lent*, and a *Depoſit* or Truſt. A Commiſſion is, when any one ſhall undertake *Gratis* the manage-

nagement and Diſpatch of Anothers buſineſs at his Deſire and Requeſt. And this happens two ſeveral ways, either when the Method of managing it is *preſcrib'd* to him, or when it is *left* to his *Judgment* and *Diſcretion*. In this Caſe as Faithfulneſs and great Diligence is required, ſince no Body almoſt will give a Commiſſion but to a Friend, and one of whom he has a very good Opinion; ſo on the other Hand the Truſtee ought to be indempnified from the Expences he is at upon the Thing committed to his Care; and alſo from the Loſſes he may incur by reaſon thereof, and which properly proceeded from the Commiſſion it ſelf.

VI. *Thing lent.* A Thing *Lent* is, when we grant *gratis* the Uſe of what is our own, to another. Wherein 'tis to be obſerv'd, that every one ſhould carefully and diligently preſerve and look after the Thing entruſted; not convert the ſame to other Uſes, or further than the Perſon Lending does conſent; and to reſtore the ſame entire and in the ſame Condition as he receiv'd it, allowing only for what detriment it muſt of neceſſity receive by the common and ordinary uſe thereof. But if any Thing be granted for a *Certain time*, and in the mean

while the Owner be in great want of it, by reaſon of ſome accident which was not foreſeen at the time of the Lending thereof, the ſame muſt be reſtor'd whenever he demands it, without any ſhuffling or delay. But if the Thing Lent *periſhes* ſuddenly or by any Accident, without any neglect of the Perſon to whom it was lent, the Value thereof is not to be made good, if the ſame in all Probability would have likewiſe periſhed in the Cuſtody of the Right Owner. Otherwiſe it is but Equity that the Perſon to whom it was lent ſhould pay the Price of it, becauſe the Right Owner would not have loſt it, had he not been ſo kind to Another. On the other hand if the *perſon borrowing* have been at any *neceſſary Expence* upon the Thing Lent beſides that, which by Conſequence attends the Uſe of it, the ſame ought to be refunded by the Owner thereof.

VII. *A Depoſit.* A *Depoſit* or *Thing left* is, when we commit any thing of our own, or any ways belonging to us, to the Truſt of another Perſon, to keep the ſame *Gratis*. In which Caſe 'tis requiſite, that the Thing ſo entruſted ſhould be carefully look'd after, and reſtor'd to the Deponent, whenever he

he pleaſes to call for it; unleſs ſuch a Reſtitution would be prejudicial both to the Owner and to Others, and upon that ſcore it may be deferr'd. Nor is it lawful to *make Uſe* of the Thing ſo depoſited, without the Conſent of the Owner, if it can any ways receive *Damage* by the *Uſe*, or it be for the Intereſt of the Owner, that it ſhould not be ſeen. And if any one ſhall preſume to do it, he ſhall make good whatſoever *Damages* it may have ſuſtain'd by the *Uſe*. Neither is it Lawful to take the Thing depoſited out of thoſe Covers and Receptacles, wherein it was wrap'd up and incloſed by the Perſon who left it. But as it is very baſe and even more heinous than Theft it ſelf to deny the Redelivery of any thing that was left to our Truſt; ſo it is yet much more deteſtable for any one to diſown a *Miſerable Depoſit*, that is, what was left with him by reaſon of any Misfortune, in Danger of Fire, Confuſion or Tumult. Again, the Deponent is to refund the *Charges* that have been laid out upon the Thing Depoſited.

VIII. *Barterings.*

Now among *chargeable Contracts*, or Covenants which imply ſomewhat to be done or given on both parts, the moſt Ancient, and that whereby Trading and

Commerce was carried on before the Invention of Money, was *Permutation* or *Bartering*, whereby on each ſide ſomething was given for ſome other thing equivalent thereto. Altho at this day, ſince the Invention of Money, that ſort of *Exchange* is chiefly practis'd among Merchants, whereby things are not ſimply compar'd between themſelves, but they are firſt reduc'd to Money, and afterwards deliver'd as ſo much Money. But *Reciprocal Donation* is a different ſort of a Thing from the Contract of Barter, for in this there is no neceſſity that an *Equality* ſhould be obſerv'd.

IX. *Buying and Selling.* BUYING and *Selling* is, when for Money the Property of any thing is acquired, or elſe ſuch a Right as is equivalent thereto, of which kind this is the moſt plain and obvious, when the Buyer, after the Value is agreed upon, immediately pays down the Price, and the Seller thereupon delivers the Commodity. Yet oftentimes the Agreement is made ſo, that the Commodity ſhould be immediately deliver'd, and the Price thereof paid at a Certain Time. And ſometimes the Price is agreed upon, but the Delivery of the Thing or Commodity is to be within a Certain Time

Time Limited. In which Caſe it ſeems but Equity, that before the Time be elaps'd, the Seller ſhould ſtand to the hazard of it; but if after the Time is elaps'd, the Buyer makes delay and neglects the taking it away, then, if the Commodity periſhes, the Buyer ſhall ſtand wholly to the loſs thereof. Now to this of Buying and Selling are wont to be added ſeveral other kinds of Bargains. As that, which is term'd *Addictio in diem*, whereby any Thing is ſold with this Proviſo, that it may be lawful for the Seller to accept of better Terms, offered by another within a Certain Time. So alſo the *Lex Commiſſoria*, which is ſuch a Condition in any Contract, as, not being perform'd within a Time Limited, the Bargain becomes void. So likewiſe any kind of Recalling, or Priviledg of recanting a Bargain, which is to be either ſo underſtood, that if the Price be laid down within a certain Time limited, or at any time whatever is offer'd, the Buyer ſhall be oblig'd to reſtore it again to the Seller; or elſe ſo, as if the Thing be offer'd again, the Seller is bound to return back again the Price thereof; or ſo as, if the Buyer be willing to ſell the ſame again, the Firſt Seller ſhould

have the Refusal of it, before any other, which is likewise call'd *Jus protimiseos* or the Right of Pre-emption. It is also customary that the Seller should reserve to himself a Certain Portion of the Lands which he sells, or some Use or Acknowledgment for the same. There is another way of Buying, which they call *per aversionem*, when several Things of different Prices are not valued singly, but at hap-hazard, and, as it were, in the lump. In that way of Sale, which is call'd an *Auction*, the Thing is adjudg'd to that Person, who, among several Bidders, offers most. Lastly, there is another way of Buying, whereby not any Certain Thing is bought, but only the Probable Hopes and Expectation thereof; which implies something of *Chance*; so as, neither the Buyer, if his Expectation fails him, nor the Seller, tho it much exceed, have any Reason to complain.

X. *Hiring and Letting.*

HIRING and *Letting* is when the Use of a Thing, or any Labour is granted to another, upon a Certain Consideration. Wherein, although regularly the Price is for the most part agreed upon before hand; yet if any one without making a Bargain makes over his Labour or the Use of any Thing belonging to him, he is sup-

posd

pos'd to expect ſo much as the Common Cuſtom, or the Honeſty and Equity of the Perſon Hiring will allow. Concerning this kind of Contract, 'tis to be obſerv'd, that if the Thing let out happens wholly to periſh, from that time the Perſon Hiring is no longer oblig'd to pay the Wages or Penſion agreed upon. But if the Thing hir'd has any Certain and Determin'd Uſe, ſo as the Owner is oblig'd to make it fit and ſerviceable for that purpoſe; in this Caſe if it receives any Prejudice, that Perſon who hires it may deduct ſo much of the Hire, as the Thing is decay'd as to its Uſe. But if the Profit or Increaſe of the Thing farmed out be uncertain, and have any thing of Chance attending it, as a large Increaſe happens to the Advantage of the Hirer, ſo a ſmall one is to his Loſs; nor can there be any Thing deducted from the Penſion in ſtrictneſs of Law, upon the Account of Barrenneſs; eſpecially ſince a Dearth of one Year may be recompenc'd by the Plenty of another. Unleſs thoſe Accidents, which prevent the Increaſe, do but very rarely happen, and the Perſon Hiring be preſum'd not to have any ways imagin'd the taking ſuch a Chance upon himſelf. For it is but equitable that ſuch

like Accidents ſhould contribute to the leſſening of the Penſion. But as he who lets out any Thing to another, is oblig'd to make the Thing fit for Uſe, and to undergo the Neceſſary Charges; ſo the Perſon Hiring muſt be a Good Husband in managing the Thing, and muſt make good what was loſt through his Neglect. And he who has hir'd any Work to be done, which by his own fault was ſpoil'd, muſt do the like. He that has agreed with another for any Service of his, which he is to do preſently, if he be hindred by any Accident from performing the ſame, he cannot demand any Reward. But he who has hir'd any one for ſome conſiderable Time, if he happens to be render'd unfit for Service for a ſhort time by Sickneſs or any other Accident, it is inhuman to turn him out of his Buſineſs or to deduct any thing out of his Wages.

XI. *Things lent.*

IN a Contract of *Things Lent*, Something is given to a Certain Perſon upon this Condition, that he be oblig'd to reſtore the ſame *Kind* after a Certain Time in the ſame *Quantity* and *Quality*. Now thoſe Things which are uſually Lent, are call'd *Fungibiles*, that is, ſuch Things as are capable of being repaid in Kind, though not in *Specie*,

Specie; becauſe any Thing of that kind may ſo perform the Part of another thing, that he who receives any thing of that *Kind* in the ſame *Quantity* and *Quality*, may be ſaid to have receiv'd the *ſame*, which he gave. The ſame Things are likewiſe determin'd and ſpecified by Number, Weight and Meaſure, in which reſpect alſo they are commonly call'd *Quantities*, as they are contradiſtinct to *Species*. Now a Thing is lent either *gratis*, ſo as no more is to be receiv'd than was deliver'd; or elſe for ſome Profit or Advantage, which is call'd *Uſury*; and which is no ways repugnant to the Law of Nature, provided it be moderate, and proportionable to the Gain, which the other Perſon makes of the Mony or the Thing Lent; and which had it not been put out, would have been neither Loſs nor Gain; and that it be not exacted of *Poor Men*, to whom a Thing Lent is ſometimes as good as an *Alms*.

XII. *Partnerſhip.*

In a Contract of *Partnerſhip* Two or More join together their *Money*, *Wares*, or *Works* with an Intention that every one ſhould receive a proportionable ſhare of the Profit; and if there happens to be any Loſs, that likewiſe muſt be born ratably by each Party. In which kind of Society as

as all Parties are oblig'd to Faithfulneſs and Induſtry; ſo no Party muſt break off the Partnerſhip before the Time, or to the detriment of his Partner. But when the time of the Partnerſhip is expired, after the Gain and Loſs is allowed, each Party is to receive what Stock he put in. But if one Perſon puts in *Money* or *Goods*, and the other contributes his *Labour*, we muſt conſider, after what manner ſuch a Contribution was made. For when one mans *Labour* is only concern'd about the managing and diſpoſing of the other Perſons *Money* or *Goods*, the Shares of the Gain are ſo to be determin'd, as the Profit of the *Money* or *Commodity* bears Proportion to the Value of the *Labour*; the *Principal* ſtill remaining the Property of him only who firſt contributed it. But when any Labour is beſtow'd in the *Improvement* of any Commodity which is put in by another, he is ſuppos'd to have ſuch a Share in the Thing it ſelf as is Proportionable to the *Improvement* it has receiv'd. Again, when men engage all that they have in any Joint-Stock, as each of the Partners muſt faithfully bring into the Account the Profits they have made; ſo alſo every one of them is to be maintain'd out of the Joint-Stock

Stock according to their Condition. But when the Partnerſhip is broken off, the Diviſion of the Goods is made ratably according as each Party at firſt brought in; without any Regard had, by whoſe Goods any Gain or Loſs hapned to the Company, unleſs beforehand it was otherwiſe agreed.

XIII. *Contracts upon Chance.*

THERE are likewiſe ſeveral Contracts, which imply a *Chance*: amongſt which may be reckon'd *Wagers*, when the Certainty of any Event, which is not yet known by either Party, is affirmed by one and denied by the other, a Certain Value being laid on both ſides, which is adjudg'd to that Perſon, to whoſe Aſſertion the Event is found to agree. Hitherto may alſo be referr'd all ſorts of *Games*, wherein we play for any thing of Value. Among which thoſe have the leaſt Chance, which contain a Trial of *Wit*, *Dexterity*, *Skill* or *Strength*. In ſome of theſe *Skill* and *Chance* have both a like ſhare. In others *Chance* does chiefly determin the matter. Altho it is the Part of the Civil Magiſtrate to conſider how far ſuch kind of Contracts may be tolerated, as conſiſtent with the Publick or Private Good: Among theſe we may reckon the various ſorts of *Lotteries*;

teries; as either when ſeveral men having paid for a Thing by Money laid down jointly, refer it to a deciſion by Lot, which of them ſhall have the Whole: or when a Box or Pot of Lots is made uſe of, into which a Certain Number of Lots or Papers, both Blanks and Prizes are put, and for ſome ſet Price, Liberty is granted of drawing them out, ſo that the Perſon drawing may receive the Prize mark'd upon the Lot. To theſe Contracts the receiv'd Methods of *Inſurance* have ſome kind of Affinity, which are ſuch Bargains whereby is undertaken the ſecuring from and making good any Damage, ſo that the Inſurer, for a certain Sum of Mony paid down, takes upon himſelf and is oblig'd to ſatisfie for whatſoever Loſſes or Damages any Commodities may undergo in their tranſportation to remote Countries; ſo that if it ſhall happen that they be loſt, he is bound to pay the Owner the Value of them.

XIV. *Sureties and Pledges.*

FOR the rendring of Contracts and Covenants more firm and ſecure, *Sureties* and *Pledges* are frequently made uſe of. A *Surety* is, when another Perſon, who is approv'd of by the Creditor, takes upon himſelf the Obligation of the Principal Debtor,

Debtor, ſo that unleſs he makes payment, the other muſt make it good; Yet ſo, that the Principal Debtor is oblig'd to repay him and ſave him harmleſs. And although the Surety cannot ſtand bound for a Greater Sum, than the Principal Debtor, yet nothing hinders but that the Surety is more firmly ty'd than the other, becauſe more is rely'd upon his Credit than upon that of the Principal Debtor. Yet in courſe the Principal Debtor is to be call'd upon before the Surety, unleſs he has wholly taken the Obligation upon himſelf; and ſuch a Perſon in the Civil Law is commonly call'd *Expromiſſor*, or an Undertaker. Now if ſeveral Perſons be Security for one, each of them is to be call'd upon for his Proportion only; unleſs by Accident any one of them becomes Inſolvent, or is not to be found. For in ſuch a Caſe the others muſt be charg'd with his Share.

XV. *Pledge or Mortgage.*

'Tis likewiſe oftentimes cuſtomary for the Debtor to deliver or make over to the Creditor for ſecuring his Debt, ſome certain Thing, which is call'd a *Pledge* or a *Mortgage*, until the Debt be paid. The Intent of which is not only that the Debtor ſhould be excited to make payment out of a deſire of recovering what belongs to him;

him; but also that the Creditor should have some Prospect, how he may be satisfied. And upon this account Pledges ought regularly to be of equal, or greater Value than the Debt it self. Now the Things which may be offer'd as Pledges, are either Improveable, or not Improveable; as to the former kind there is commonly added a Covenant call'd *Pactum ἀνιχρήσεως*, which impowers the Creditor to enjoy the Fruits and Profits of that Pledge, instead of *Interest*; Now as to the other sort the *Lex Commissoria* takes Place; which provides that the Pledge shall be forfeited to the Creditor, if Payment be not made within a Certain time Limited: And this is no ways unreasonable, when the Pledge is not of greater Value than the Debt, together with the Use for the intermediate Time, and provided the Overplus be restored to the Owner. But as the Creditor is oblig'd to restore the Pledge upon payment of the Debt; so in the mean time he ought to be as careful in the preserving thereof, as if it were really his own. And when there is no *Pactum ἀνιχρήσεως*, and the thing be of that nature, as to receive any damage by Use, or if it be any ways for the Debtor's Advan-

vantage, he ought not to make uſe of it without his Conſent. Now a *Mortgage* differs from a *Pledge* in this, that a Pledge conſiſts in the Delivery of the Thing, but a *Mortgage*, tho the Thing be not deliver'd, holds good by the bare Aſſignation of a Thing altogether Immoveable, from which, Payment not being made, the Creditor may receive ſatisfaction for his Debt.

AND thus what the Duties of Perſons contracting are, will plainly appear from the End and Nature of theſe Contracts. XVI.

CHAP. XVI.

The ſeveral Methods by which the Obligations ariſing from Contracts are diſſolv'd.

AMONG the ſeveral ways of diſcharging Obligations ariſing from Contracts, and by which likewiſe the Duties and Offices which proceed from thence do utterly expire, the chiefeſt and moſt Natural of all is the *Fulfilling* or *Payment* of I. *Fulfilling or Payment.*

of what was agreed upon. Where altho generally he that is the *Debtor*, is oblig'd to make the Payment; yet if it be perform'd by any other in *his name*, who contracted the Obligation, the ſame is diſſolv'd; ſince 'tis no ways material by what Perſon the Thing is perform'd. Yet with this Proviſo, that he who pays for another, without any Intention of beſtowing it upon him, he may demand from the ſame again what he laid out upon his Account. Moreover, Payment muſt be made to that Perſon to whom it is due, or elſe to one whom he has *appointed* to receive the Debt in his Name. And laſtly, *that very Thing* muſt be perform'd or paid, which was agreed upon; not any Thing elſe inſtead thereof, intire and not imperfect, not only in parcels or by piece-meal; and likewiſe at the *Place* and *Time* appointed. Altho frequently the *Courteſie* of the Creditor or the *Inability* of the Debtor may be the occaſion of prolonging the time of Payment, or of receiving a Debt by little Sums at once, or elſe of accepting of one Thing for another.

II. *Compenſation.* OBLIGATIONS are likewiſe taken away by *Compenſation*, which is an Adjuſting or Ballancing the Credit and the Debt,

Debt, one againſt the other, or when the Debtor is therefore diſcharg'd, becauſe 'tis manifeſt that the Creditor himſelf ſtands indebted to him for ſomething that is of the ſame kind, and of the ſame Value. Eſpecially ſince in thoſe *Things* (call'd *res fungibiles*, that is) which admit of being paid in *kind* tho not in *ſpecie*, an Equivalent is look'd upon to be the ſame Thing; and where the Debt is Mutual, ſince I muſt preſently return back as much as I have receiv'd; for the declining of unneceſſary Payments, it ſeems to be the moſt convenient way ſo to order the matter that each Party may keep what he has. Now it is evident that thoſe Things aforemention'd may very properly be brought to a Balance, of which the time for Payment is either preſent, or paſt. But it is not ſo in other Things or Performances which are of a Different Nature; unleſs they are eſtimated on both ſides and reduc'd to Money.

III. *Releaſe.*

AN Obligation alſo ceaſes when the Thing is *releaſed* and *forgiven* by him, to whom it was due, and whoſe Intereſt it was that the Obligation ſhould have been perform'd. And this is done either *expreſly*, by ſome Certain Tokens declaring

his Consent; as by giving a Discharge, by giving up or cancelling the Bonds and Writings; or else *tacitly*, if he himself hinders, or is any ways the Occasion that what is owing to him cannot be paid.

IV. *Breaking off mutually.* THOSE Obligations are likewise sometimes dissolv'd, which imply some Performance on both sides, *by a mutual breaking off* before any thing on either side be done in the Contract; unless this be expresly forbidden by the Laws. But if any thing is perform'd by one of the Parties, the same must either be by him *releas'd* to the other, or else be made up some other way.

V. *Falseness on one side.* BESIDES, an Obligation is not indeed properly dissolv'd, but rather broken by the *Falseness* of either Party; for when the one does not perform, what was agreed upon, neither is the other oblig'd to make good what he undertook, in contemplation of the Others performing. For as the main Things which are to be performed in Contracts, the Former are always included in the Latter by way of *Condition*; as if it should be said, I will perform this, if you perform that first.

OBLIG

OBLIGATIONS likewiſe ceaſe, when that *State of things* upon which they chiefly depended is either *alter'd* by the Party who was oblig'd to perform ſomewhat, or by him to whom and for whoſe ſake it was to be done. VI. *Caſe alter'd.*

SOMETIMES alſo *Time* it ſelf puts an end to ſome Obligations, whoſe Duration depends upon a certain preciſe Day; unleſs it be prolong'd by the Expreſs or *tacit Conſent* of each Party. Yet there is a Neceſſity that the Power of exacting the Obligation within the time Limited ſhould ſtand good. VII. *Time.*

Laſtly, OBLIGATIONS which exiſt only with regard to ſome particular Perſon, are diſſolv'd by *Death*; for when the Subject is taken away, the Accidents alſo muſt of neceſſity be extinguiſh'd. Yet ſometimes the Obligations of the Deceaſed are continued in the Perſons ſurviving. And that either becauſe the Survivor, out of Duty, or for other Reaſons takes upon himſelf to fulfil the Obligations of the Perſon Deceaſed; or becauſe the Obligation muſt be ſatisfied out of the Goods of the Deceaſed, with which the Heir is charg'd when he receives the Poſſeſſion. VIII. *Death.*

IX. *Assignment.* ANY one may make over by *Assignment* his Debtor to his Creditor, provi... he approves him, that he, instead of ... other may discharge the Debt. Wh... indeed there is required the Consent ... the Creditor, but not of that third Per... who is the Debtor, whom I may turn o... without his knowledg or consent to ... other Person that is to accept him. ... it is no great matter, *to whom* any Per... makes payment; but *from whom* the D... is to be required, is very material.

CHAP. XVII.

Of Meaning or Interpretation.

I. *Rules for Interpretation necessary.* SO indeed it is, that neither in th... Things which are commanded by t... Supreme Magistrate, no man is accou... to be bound any further than the la... Magistrate requires; and whosoever of ... own free Will sets himself under any O... ligations, binds himself but according ... his *own Intention*. Yet because one ... cannot make a judgment of another ma... Intention, but by such Signs and Actio...

s are apparent to the Senſes; hence there-
e every one in *foro humano* is adjudg'd
be *obliged to that Thing, which he may
ly be ſuppoſed to have ſuggeſted by a
ght Interpretation of the outward Signs
de by him.* Wherefore 'tis of great Uſe
r the true Underſtanding both of Laws
d Covenants, and for the better diſ-
arging the Duties thence ariſing, that
re ſhould be laid down *Certain Rules
r the true Interpretation of Words* eſpe-
ially, they being the moſt common and
dinary Signs whereby we expreſs our
Mind and Intention.

II. *Popular Terms.* CONCERNING *Common* and *Vulgar Terms* this is the Rule: Words are gene-
ally to be taken in their moſt Proper
nd receiv'd Signification, which they have
ot ſo much from Analogy and Conſtru-
tion of Grammar, or Conformity of De-
ivation, as by Popular *Uſe* and *Cuſtom*,
hich is the Sovereign Comptroller and
dg of Speech.

III. *Terms of Art.* TERMS *of Art* are to be explain'd ac-
rding to the Definitions of Perſons know-
g in each Art. But if thoſe Terms are
ifferently defin'd by ſeveral Perſons, for
e avoiding of Diſputes, 'tis neceſſary that
e expreſs in Vulgar Terms, what we mean
y ſuch a Word.

IV. *Conjectures.* BUT for discovering the genuine meaning of Words 'tis sometimes necessary to make use of *Conjectures*, if either the Words in themselves or the Connection of them be Ambiguous and liable to a double Interpretation; or if some Parts of the Discourse seem to contradict the other, yet so as by a fair and true Explanation they may be *reconcil'd*. For where there is a plain and manifest Contrariety the latter part must be accounted to *contradict* that which went before.

V. *Taken from the Subject-Matter.* NOW Conjectures of the Mind, and the Right meaning thereof in an Ambiguous, or Intricate Expression are chiefly to be taken *from the Subject Matter, from the Effects and the Accidents* or Circumstances. As to the *Matter* this is the Rule: Words are generally to be understood according to the Subject Matter. For he that speaks is suppos'd to have always in view the Matter, of which he discourses, and therefore agreeable thereunto the meaning of the Words is always to be applied.

VI. *From the Consequences.* AS to the *Effects* and *Consequences* this is the Rule: When Words taken in the Literal and Simple Sense admit either of none or else of some absurd Consequence, we must recede so far from the more re-

ceiv'

ceiv'd Meaning, as is neceſſary for the avoiding of a Nullity or Abſurdity.

FARTHERMORE moſt probable Conjectures may be taken from the *Circumſtances*; becauſe of Conſequence every one is preſum'd to be conſiſtent with himſelf. Now theſe Circumſtances are to be conſider'd either as to their *Place*, or only as to the *Occaſion* of them. Concerning the *Former* of theſe this is the Rule: If the Senſe in any Place of the Diſcourſe be expreſs'd plainly and clearly, the more obſcure Phraſes are to be interpreted by thoſe plain and familiar ones. To this Rule there is another nearly related: In the explaining of any Diſcourſe the Antecedents and Conſequents muſt be careſully heeded, to which thoſe Things that are inſerted between are preſum'd to anſwer and agree. But concerning the *Latter* this is the Rule: The *obſcure* Expreſſions of one and the ſame Man are to be interpreted by what he has deliver'd more clearly, tho it was at another Time and Place; unleſs it manifeſtly appears that he has chang'd his Opinion. VII. *From Circumſtances.*

IT is likewiſe of very great Uſe for finding out the true Meaning, in Laws eſpecially, to examine into the *Reaſon of* VIII. *The Reaſon of the Thing.*

that Law, or thoſe Cauſes and Conſiderations which induced the Legiſlator to the making thereof; and more particularly when it is evident, that that was the *only Reaſon* of the Law. Concerning which this is the Rule: That Interpretation of the Law is to be followed, which agrees with the Reaſon of that Law; and the contrary is to be rejected, if it be altogether inconſiſtent with the ſame. So likewiſe when the Sole and Adequate Reaſon of the Law ceaſes, the Law it ſelf ceaſes. But when there are ſeveral Reaſons of the ſame Law, it does not follow that if one of them ceaſes, the whole Law ceaſes too, when there are more Reaſons remaining, which are ſufficient for the keeping it ſtill in Force. Sometimes alſo the Will of the Lawgiver is ſufficient, where the Reaſon of the Law is conceal'd.

IX. *Words of various ſignification.*

MOREOVER, it is to be obſerv'd that many Words have *various Significations*, one meaning being of great Latitude and the other more *ſtrict* and *confin'd*; and then the Subject-Matter is ſometimes of a *favourable* Nature, ſometimes *invidious*, ſometimes between both or *Indifferent*. Thoſe are *favourable* where the Condition is Equal on both ſides, where regard

is

is had to the Publick Good, where provision is made upon Transactions already ratified, and which tends to the promoting of Peace, and the like. The *Invidious* or most distastful is that which aggrieves one Party only or one more than the other, that which implies a certain Penalty, that which makes any Transaction of none effect or alters what went before, that which promotes Wars and Troubles. That which is between both and *Indifferent* is, That indeed which makes some Change and Alteration in the former State of things, but 'tis only for the sake of Peace. Concerning these, this is the Rule: That those Things which admit of a *Favourable* Construction are to be taken in the largest and most comprehensive meaning, but those things which are capable of an unpleasing Construction in the most Literal and strictest sense of the Words.

X. *Conjectures extended.*

THERE are likewise some kind of Conjectures which are elsewhere to be fetch'd than from the Words, and which are the occasion that the Interpretation of them is sometimes to be *extended*, and at other times to be *confin'd*. Although 'tis more easie to give Reasons why the Explanation thereof should be *confin'd* and *limited*

mited than *extended.* But the Law may be *extended* to a Case, which is not expres'd in the Law, if it be apparent, that the Reason which suits to this Case, was particularly regarded by the Lawgiver amongst other Considerations, and that he did design to include the other Cases of the like Nature. The Law also ought to be *extended* to those Cases, wherein the subtilty of Ill men have found out tricks in order to evade the force of the Law.

XI. *Conjectures limited.*

Now the Reason why some Expressions deliver'd in General Terms should be *restrain'd,* may happen either from the *Original Defect of the Will* or from the Repugnancy of some *Emergent Case* to the Will and Intention. That any Person is to be presum'd not at first to have intended any such thing, may be understood, 1. From the *Absurdity,* which otherwise would follow from thence; and which, 'tis believ'd, no man in his wits could design. Hence General Expressions are to be restrain'd, inasmuch as such Absurdity would thence otherwise arise. 2. From *Want of that Reason* which might chiefly cause him to be of that mind. Hence in a General Expression those Cases are not comprehended, which do no ways agree with the Sole

and

and Adequate Reaſon of the Law. 3. From *Defect of Matter*, which always he that ſpeaks is ſuppos'd to have conſider'd. And therefore all thoſe General Words are to be regarded with relation to the ſame.

XII. *Emergent Caſes.*

NOW that an emergent State of Things is repugnant to the Intention of the Perſon who made the Conſtitution, may be diſcover'd either from *Natural Reaſon* or elſe from ſome declared mark and *Signification* of his Meaning. The Firſt happens, when we muſt exclude *Equity*, if ſome certain Caſes be not exempted from the Univerſal Law. For *Equity* is the Correcting of what is defective in the Law by reaſon of its *Univerſality*. And becauſe all Caſes could neither be foreſeen, nor ſet down, becauſe of the infinite variety of them; therefore when General Words are apply'd to ſpecial Caſes, thoſe Caſes are to be look'd upon as Exempt, which the Lawgiver himſelf would likewiſe have exempted, if he had been conſulted upon ſuch a Caſe. But we muſt not have recourſe to *Equity*, unleſs there be very ſufficient Grounds for it. The Chiefeſt of which is, if it be evident, that the Law of Nature would be violated, if we follow too cloſely the Letter of that Law. The next Ground of Exception is;

that

that tho it be not indeed unlawful to keep to the very words of the Law; yet, if upon an impartial conſideration the Thing ſhould ſeem too grievous and burdenſom, either to Men in General, or to ſome certain Perſons; or elſe if the Deſign be not of that Value, as to be purchas'd at ſo dear a Rate.

XIII. *Exception with regard to Time.*

Laſtly, AN Exception is to be made from a General Expreſſion, if Words put in another Place, are not indeed directly oppoſite to the preſent Law or Agreement, but by reaſon of ſome Circumſtance in Time *pro hic & nunc* cannot be obſerv'd all at once. Here therefore ſome certain Rules are to be taken notice of, in order to underſtand what Law in that Caſe, when both cannot be obſerved at the ſame Time, is to be prefer'd. 1. That which is only *permitted*, is to give place to what is *enjoin'd*. 2. What muſt be done at ſome *certain* Time, is to be prefer'd to that which may be done at *any* time. 3. An *Affirmative* Precept gives place to the *Negative*; or when the Affirmative Precept cannot be obſerv'd, without the Violation of the Negative, the Performance of the former is to be omitted for the preſent. 4. Among Agreements and Laws which are otherwiſe of equal Authority,

rity, a *Particular* is to be prefer'd before a *General* one. 5. Of two Covenants made together at one and the ſame Time, whereof the One is founded upon more *honourable*, and *beneficial* Reaſons than the other, it is but equal that the Former ſhould take place of the Latter. 6. A Covenant or Contract that is confirm'd by an *Oath*, takes place of one which is not ſo, when both cannot be obſerv'd at the ſame time. 7. An *Imperfect* Obligation gives place to that which is *perfect*. 8. The Duty of *Beneficence*, all circumſtances rightly compared, gives place to the Duty of *Gratitude*.

THE

THE
Whole Duty of Man,
According to the
LAW of NATURE.

BOOK II. CHAP. I.

Of the Natural State of Men.

I. *Condition of Man.*

IN the next place we are to enquire concerning those Duties which are incumbent upon a Man with regard to that *particular State* wherein he finds himself ordained by Providence to live in the World. What we mean by such *State* is in general that *Condition* or *Degree* with all its Relatives in which men being placed, they are therefore supposed to be obliged to those or these Performan-

formances: And such *State*, whatever it be, has some peculiar Rights and Offices thereunto belonging.

II. *Twofold. Natural, and Adventitious.*

THE *State* of Man then may be distinguish'd into either *Natural* or *Adventitious*. The Natural State by the help of the Light of Natural Reason alone, is to be considered as threefold, either as it regards *God our Creator*, or as it concerns *every single man* as to *Himself*, or as it affects *other men*; concerning all which we have spoken before.

III. *Natural State threefold. First.*

THE Natural State of Man consider'd in the *first* mention'd way, is that Condition wherein he is plac'd by the Creator pursuant to his Divine Will, that he should be the most excellent Animal in the whole Creation. From the consideration of which *State* it follows, that Man ought to acknowledge the Author of his Being, to pay him Adoration, and to admire the Works of his hands; and moreover to lead his Life after a different manner from that of the Brutes. So that the contrary to this State is *the Life and Condition of Brutes*.

IV. *Second.*

IN the *second* way we may contemplate the Natural *State* of Man, by seriously forming in our minds an Idea of what his Con-

Condition would be, if every one were left *alone* to himſelf without any help from *other* men, eſpecially conſidering the preſent Circumſtances under which we at this time find Humane Nature: Which would certainly be much more miſerable than that of a Beaſt, if we think with our ſelves, with what weakneſs man enters this World, ſo that he muſt immediately periſh, except he be ſuſtained by others, and how rude a Life he muſt lead, if he could procure nothing for himſelf, but by means of his own ſingle Strength and Skill. But 'tis plain, that we owe it all to the aid of *other perſons*, that we are able to paſs through ſo many Infirmities from our Infancy to Manhood; that we enjoy an infinite number of Conveniences; that we can improve our Minds and Bodies to ſuch a degree as to be uſeful to our ſelves and our Neighbour. And in this ſenſe the Natural State is oppoſed to *a Life not cultivated by the Induſtry of men.*

V. *Third.* AFTER the *third* way we are to regard the Natural State of Man, according as Men are underſtood to ſtand in reſpect to one another merely from that common Alliance which reſults from the *Likeneſs* of their *Natures*, before any mutual Agree-

ment made or other Deed of Man perform'd, by which one could become obnoxious to the Power of another. In which Senſe thoſe are ſaid to live reciprocally in a *State of Nature*, who acknowledge no *common Superior*, and of whom none can pretend Dominion over his fellow, and who do not render themſelves known to each other either by the doing of good turns or injuries. And this State in this Senſe diſtinguiſhes it ſelf from the *Condition of Man in a Community*.

VI. MOREOVER, the Property of this *Natural State* may be conſider'd, either as it is repreſented to us *Notionally* and by way of *Fiction*, or as it is *really* and *indeed*. The *former* is done, when we imagine a certain Multitude of men at the beginning to have ſtarted up into beings all at once without any dependence upon one another, as it is fabled of the *Cadmean* Harveſt of Brethren; or elſe when we form a Suppoſition, that all the mutual Ties by which Mankind are one way or other united together were now diſſolv'd, ſo that every man might ſet up for himſelf apart from the reſt, and no one man ſhould have any other Relation to his Fellow, but the likeneſs of their Natures. But the true

Conſider'd again two ways.

true State of Nature, or that which is *really* ſo, has this in it, that there is no man who has not ſome peculiar Obligations to *ſome* other men, though with all the reſt he may have no farther Alliance than that they are Men and of the ſame Kind, and beſide what ariſes from thence he ows them no Service at all. Which at this time is the Caſe of many Kingdoms and Communities, and of the Subjects of the ſame with reſpect to the Subjects of the other; and the ſame was antiently the State of the Patriarchs when they liv'd independently.

VII. *Paternal Authority.*

IT is then taken for manifeſt, that all Mankind never were univerſally and at once in the former *Natural State*; for thoſe Children who were begotten and born of the Protoplaſts, or firſt created Man and Woman, (from whom the whole Human Race derives its Original, as the Holy Scriptures tell us) were ſubject to the *Paternal Authority*. Not but that this Natural State roſe afterwards among ſome People: for Men at firſt, in order to ſpread over this wide World, and that they might find for themſelves and their Cattel more ſpacious Abodes, left the Families of their Fathers, and roaming into various Regions, almoſt

every ſingle man became himſelf the Father of a Family of his own; and the Poſterity of theſe again diſperſing themſelves, that *peculiar Bond* of Kindred and the Natural Affections thence ariſing by little and little were extinct, and no other Obligation remain'd, but that common one, which reſulted from the Likeneſs of their Natures. Till afterwards when Mankind was vaſtly multiplied, they having obſerv'd the many Inconveniencies of that looſe way of Living, the Inhabitants of places near one another by degrees join'd in Communities, which at firſt were ſmall, but grew ſoon greater, either by the voluntary or forc'd Conjunction of many which were leſſer. And among theſe Communities the State of Nature is ſtill found, they being not otherwiſe oblig'd to each other, than by the common Tie of Humanity.

VIII. *Natural Liberty.* Now it is the chief *Prerogative* of thoſe who are in the State of Nature, that they are ſubject and accountable to none but God only; in which reſpect alſo this is called a State of *Natural Liberty*, by which is underſtood, that a Perſon ſo circumſtanc'd without ſome antecedent human Act to the contrary, is to be accounted abſolutely in his own power and diſpoſi-

tion,

tion, and above the controll of all mortal Authority. Therefore alſo any one perſon is to be reputed *equal* to any other, to whom himſelf is not ſubject, neither is that other ſubject to him. And furthermore whereas Man is indued with the Light of Reaſon, by the guidance whereof he may temper and regulate his Actions, it follows, that whoſoever lives in a State of Natural Liberty, depends not on any other for the direction of his doings; but is veſted with a Right to do according to his own Judgment and Will any thing he ſhall think good, and which is conſonant to ſound Reaſon. And whereas Man, from that univerſal Inclination which is implanted in all Living Creatures, cannot but (in order to the Preſervation of his Perſon and his Life, and to the keeping off whatſoever Miſchiefs ſeem to threaten the Deſtruction thereof) take the utmoſt care and pains, and apply all neceſſary means to that end; and yet whereas no man in this Natural State has any ſuperiour perſon, to whom he may ſubmit his Deſigns and Opinions, therefore every one in this State makes uſe of his own Judgment only in determining concerning the Fitneſs of Means, whether they conduce to his Self-

Preſervation or not. For tho he may give ear to the Advice of another, yet it is in his choice whether he will approve or reject the ſame. But that this abſolute Power of governing himſelf be rightly manag'd, it is highly neceſſary, that all his Adminiſtrations be moderated by the Dictates of true Reaſon and by the Rules of the Law of Nature.

IX. *Its Inconveniences.*

AND yet this Natural State, how alluring ſoever it appears to us with the Name of Liberty, and flattering us with being free from all manner of Subjection; yet was it clog'd, before men join'd themſelves under Governments, with many *Inconveniences*; whether we ſuppoſe every ſingle man as in that Condition, or only conſider the Caſe of the Patriarchs or Fathers of Families, while they lived independent. For if you form in your mind the Idea of a Man even at his full growth of Strength and Underſtanding, but without all thoſe Aſſiſtances and Advantages by which the Wit of man has rendred Human Life much more orderly and more eaſie than at the beginning; you ſhall have before you, a naked Creature, no better than dumb, wanting all things, ſatisfying his Hunger with Roots and Herbs, ſlaking

ſlaking his Thirſt with any Water he can find, avoiding the extremities of the Weather by creeping into Caves or the like, expoſed an eaſie prey to the ravenous Beaſts, and trembling at the ſight of any of them. 'Tis true, the way of Living among the Patriarchs might be ſomewhat more comfortable even while they contain'd their Families apart; but yet it could by no means be compar'd with the Life of men in a Community, not ſo much for the Need they might have of things from abroad, which, if they reſtrain'd their Appetites, they might perhaps well enough bear withal; as becauſe in that State they could have little Certainty of any continued Security. And that we may comprehend all in a few words, in a State of Nature every man muſt rely upon his own ſingle Power, whereas in a Community all are on his ſide; there no man can be ſure of enjoying the Fruit of his Labour, here every one has it ſecur'd to him; There the Paſſions rule, and there is a continual Warfare accompanied with Fears, Want, Sordidneſs, Solitude, Barbarity, Ignorance and Brutiſhneſs; here Reaſon governs, and here is Tranquillity, Security, Wealth, Neatneſs, Society, Elegancy, Knowledg and Humanity.

X. *Most convenient Remedy in Controversies.*

BESIDE, in the Natural State, if any one either will not voluntarily make good, what he has *covenanted* to do, or does another an *Injury*, or if upon any other account some Dispute arise; there's no man has Authority to force the naughty person to perform his Bargain, to cause him to repair the Wrong, or to determine the Controversie; as there is in Communities, where I may have recourse for help to the Civil Magistrate. And here because Nature allows not that upon every occasion we should betake our selves to *violent means*, even though we are very well satisfied in our Consciences of the Justice of our Cause; therefore we are first to try, whether the matter may not be composed after a milder way, either by an amicable reasoning of the point in question between the parties themselves, or by a free and unconditional Compromise, or *Reference* of the Debate to *Arbitrators*. And these Referees are to manage the matter with an equal regard to both sides, and in giving their Award they are to have an Eye only to the Merits of the Cause, setting aside all partial Animosity or Affection. For which reason it is not best to chuse any man an Arbitrator in such a Cause, wherein he

he ſhall have greater hopes of Profit or particular Reputation, if one party get the better rather than the other; and conſequently where it is his Intereſt that that Litigant at what rate ſoever gain the point. Hence alſo there ought not to be any under-hand Bargain or Promiſe between the Umpire and either of the Parties by which he may be obliged to give his Judgment on the behalf of the ſame. Now in this affair, if the Arbitrator cannot find out the Truth in Fact neither from the Confeſſions of the parties, nor from apparent Writings nor any other manifeſt Arguments and Signs; he muſt then inform himſelf by the Teſtimonies of Witneſſes, whom though the Law of Nature obliges, eſpecially being uſually reinforc'd by the Religion of an Oath, to ſpeak the Truth, yet it is moſt ſafe not to admit the Evidence of ſuch as are ſo peculiarly affected to one party, that their Conſciences will be forc'd to ſtruggle with the Paſſions either of Love, Hatred, deſire of Revenge, any violent Affection of the Mind, or elſe ſome ſtrict Friendſhip or Dependence; all or any of which every man is not endued with Conſtancy enough to ſurmount. Controverſies alſo are frequently made an end

of

of by the *Interpoſition* of the common *Friends* of each party, which to do is deſervedly accounted among the beſt Actions of a good man. For the reſt, in this *State*, when Performances are not made good by either ſide of their own accord, the other ſeeks his Due after what manner he likes beſt.

XI. *Uncertainty of the State of Nature.*

Now though it was the Will of Nature itſelf that there ſhould be a ſort of *Kindred* between all Mankind, by virtue of which they might be oblig'd at leaſt not to hurt one another, but rather to aſſiſt and contribute to the Benefit of their Fellows: Yet this Alliance is found to be but of little force among thoſe who live promiſcuouſly in a State of *Natural Liberty*, ſo that any man who is not under the ſame Laws and poſſibilities of Coercion with our ſelves, or with whom we live looſely and free from any Obligation in the ſaid State, is not indeed to be treated as an *Enemy*, but may be look'd upon as a *Friend* not too freely to be *truſted*. And the reaſon hereof is, that Man not only is accompliſh'd with an Ability to do miſchief to his like, but for many cauſes has alſo a Will ſo to do: For ſome the Pravity of their Natures, Ambition or Covetouſneſs incite

incite to make inſults upon other men; others, though of a meek and modeſt Nature, are forc'd to uſe Violence either in defending themſelves from imminent Outrages, or by way of Prevention. Beſide that a Rivalſhip in the deſire of the ſame thing in ſome and in others Competition for Priority in one Quality or other ſhall ſet them at Variance. So that in this State 'tis hardly poſſible but that there ſhould be perpetual Jealouſies, Miſtruſts, Deſigns of undoing each other, Eagerneſs to prevent every one his Fellow, or Hopes of making addition to his own Strength by the Ruin of others. Therefore as it is the Duty of every *honeſt* man to be content with his own, and not to give provocation to his Neighbor, nor to covet that which is his; ſo alſo it behoves him who would be as *wary* as is needful, and who is willing to take care of his own good, ſo to take all men for his Friends, as not to ſuppoſe yet but that the ſame may quickly become his Enemies; ſo to cultivate Peace with all men, as to be provided though it be never ſo ſoon chang'd to Enmity. And for this reaſon happy is that Common-wealth where in times of Quietneſs conſideration is had of requiſites for War.

CHAP.

Chap. II.

Of the Duties of the Married State.

I. *Matrimony.* AMONG those States of Man which we have call'd *Adventitious*, or in which a man is plac'd by some antecedent humane Act, *Matrimony* obtains the first place. Which also is the chief Representation of the Social Life, and the Seed-Plot of Mankind.

II. *Instituted by Nature.* AND first it is certain, that that ardent Propensity found to be in both Sexes to each other was not implanted in them by the All-wise Creator merely that they might receive the Satisfaction of a vain Pleasure; for had it been so, nothing could have been the occasion of greater Brutishness and Confusion in the world; but that hereby married persons might take the greater delight in each others Company; and that both might with the more chearfulness apply themselves to the necessary business of Propagation, and go through those Cares and Troubles which accompany the Breeding and Education of Children. Hence it follows, that all Use of the

the Parts deſtin'd by Nature for this work is contrary to the Law Natural, if it tends not to this End. On which account alſo are forbidden all Luſts for a different *Species* or for the ſame Sex; all filthy Pollutions, and indeed all Copulations out of the State of Matrimony, whether with the mutual Conſent of both parties, or againſt the Will of the Woman.

III. *Obligation to Matrimony.*

THE *Obligation* under which we lie to contract *Matrimony* may be conſider'd either with reſpect to *Mankind* in general, or to our particular *Station* and *Relation* in the World. The ſtrength of the former of theſe conſiſts in this, that the Propagation of Mankind neither can nor ought to be kept up by promiſcuous and uncertain Copulations, but is to be limited and circumſcribed by the Laws of *Wedlock*, and only to be endeavour'd in a married State: For without this no man can imagine any Decency or orderly Society among men, nor any Obſervation of the Civil Rules of Life. But men *ſingly* conſider'd, are oblig'd to enter the Matrimonial State, when a convenient occaſion offers itſelf; whereto alſo not only a mature Age and an Ability for Generation-Work is neceſſary, but there ought beſide to be a poſſibility of lighting

ing on a perſon of the like Condition, and a Capacity of maintaining a Wife and the Poſterity ſhe ſhall bring forth; and that the Man may be ſuch a one as is fit to become the Maſter of a Family. Not ſtill but that any man is excepted from this Duty, who betakes himſelf to a chaſt ſingle life, finding his Conſtitution accommodated thereto, and that he is capable in that rather than in the married State, to be uſeful to Mankind or to the Common-wealth; eſpecially alſo if the Caſe be ſo, that there is no fear of the want of People.

IV. *Matrimonial Contract.*

BETWEEN thoſe who are about to take upon themſelves the Married State, a *Contract* ought and is wont to intervene, which, if it be *regular* and *perfect*, conſiſts of theſe heads. Firſt, becauſe the Man (to whom it is moſt agreeable to the Nature of both Sexes that the Contract ſhould owe its Original) intends hereby to get to himſelf Children of his own, not ſpurious or ſuppoſititious; therefore the Woman ought to *plight her troth* to the Man, that ſhe will permit the uſe of her Body to no other man but to him; the ſame on the other hand being required of the Husband. And ſecondly, ſince nothing can be more flatly contrary to a Social and Civil Life, than

than a vagabond, deſultory and changeable way of Living without any Home, or certain Seat of his Fortunes; and ſince the Education of that which is the Off-ſpring of both, is moſt conveniently taken care of by the joint help of both Parents together; and whereas continual Cohabitation brings more of Pleaſure and Comfort to a Couple who are well match'd, whereby alſo the Husband may have the greater Aſſurance of his Wives Chaſtity: Therefore the Wife does moreover engage her Faith to her Husband, that ſhe will *always inhabit* with him and join herſelf in the ſtricteſt bond of Society, and become of the ſame Family with him. And this mutual Promiſe muſt be ſuppoſed to be made from the Husband to her of the like Cohabitation, the Nature of this State ſo requiring. But becauſe it is not only agreeable to the natural Condition of both Sexes, that the Caſe of the Husband ſhould be the more honourable of the two, but that he ſhould alſo be the Head of the Family, of which himſelf is the Author; it follows, that the Wife ought to be ſubject to his Direction in matters relating to their mutual State and to their Houſhold. Hence it is the Prerogative of the Husband to chuſe

his Habitation, and she may not against his Will wander abroad or lodge apart. Yet it does not seem essentially necessary to Matrimony, that the Man should have power of Life and Death or of inflicting any grievous Punishment, as neither of disposing at his pleasure of all the Estate or Goods of his Wife: but these points may be settled between the Married Couple by peculiar Agreements, or by the municipal Laws of the Place.

V. *One Man and one Woman.*

NOW though 'tis manifestly repugnant to the Law of Nature, that one Woman should have more Men than one at once; yet it obtain'd among the *Jews* of old and many other Nations, that one Man might have two or more Wives. Nevertheless let us allow never so little weight to Arguments brought from the Primitive Institution of Marriage deliver'd in Holy Writ, yet it will appear from Right Reason, that 'tis much more decent and fit for one Man to be content with one Woman. Which has been approv'd by the Practice of all the Christians through the World that we know of, for so many Ages.

VI. *Contract perpetual.*

NOR does the Nature of this strict Union tell us less plainly, that the Bond of *Matrimony ought to be perpetual,* and not

to

to be unloosed, but by the Death of one Party; except the *essential Articles* of the mutual Matrimonial Covenant be violated either by *Adultery* or a wicked and dishonest *Desertion*. But for *ill dispositions* which have not the same Effect with such *Desertion*, it has obtain'd among Christians that a Separation from Bed and Board shall be sufficient, without allowing any Engagement in a new Wedlock. And one great Reason hereof, among others is this, that too free a Liberty of Divorce might not give encouragement to either party to cherish a stubborn Temper; but rather, that the irremediable State of each might perswade both to accommodate their Humours to one another and to stir them both up to mutual Forbearance. For the rest if any Essential Article of the Matrimonial Contract be violated, the *wrong'd* Party only is discharg'd from the Obligation; the same still binding the other, so long as the former shall think good.

VII. *Moral Impediments.*

ANY man may contract with any Woman, where the Law makes no special Prohibition, if their Age and Constitution of Body render them capable of Matrimony, except some *Moral Impediment* be in the way; presupposing that he or she is under

a Moral Impediment, who are already married to some other person.

VIII. *Kinred.* AND it is accounted a Moral Impediment of lawful Matrimony, if the parties are *too nearly allied by Blood or by Affinity.* On which score even by the Law of Nature those Marriages are accounted incestuous and wicked which are contracted between any persons related in the *Ascending* or *Descending* Line. And for those in the other *transverse Order*, as with the Aunt either on the Fathers or Mothers side, the Sister, &c. As also those in *Affinity*, as, with the Mother-in-Law, Step-Mother, Step-Daughter, &c. not only the positive Divine Law, but that of most civiliz'd Nations, with whom also all Christians agree, does abominate. Nay the Special Laws of many Countries forbid Marriage even in the more remote Degrees, that so they may keep men from breaking in upon those which are more sacred, by setting the Barriet at a greater distance.

IX. *Ceremony.* NOW as the Laws are wont to assign to other Contracts and Bargains some *Solemnities*, which being wanting, the Act shall not be adjudg'd of validity: so also it is in Matrimony, where the Laws require for the sake of Decency and good Order

that

that such or such *Ceremonies* be perform'd. And these though not enjoin'd by the Law Natural, yet without the same those who are Subjects of such a Community, shall not consummate a legal Matrimony; or at least such Contract shall not be allow'd by the Publick to be effectual.

X. *Mutual Duties.*

IT is the Duty of a *Husband* to love his Wife, to cherish, direct and protect her; and of the *Wife* to love and honour her Husband, to be assistant to him not only in begetting and educating his Children, but to bear her part in the Domestick Cares. On both sides the Nature of so strict an Union requires, that the Married Couple be partakers as well in the good as ill fortune of either, and that one succour the other in all Cases of Distress; moreover, that they prudently accommodate their Humours to each other; in which matter it is the Wives Duty to submit.

Chap. II.

The Duty of Parents and Children.

I. *Paternal Authority.*

FROM Matrimony proceeds *Paternal Power*, which is subjected to the *Paternal Power*, the most ancient and most sacred Kind of Authority, whereby Children are oblig'd to reverence the Commands of their Parents and to acknowledge their Pre-eminence.

II. *Its Foundation twofold.*

THE Authority of Parents over their Children hath its chief Foundation on a *twofold Cause*. First, because the Law of Nature itself, when Man was made a sociable Creature, enjoin'd to *Parents the Care of their Children*; and left they should herein be negligent, Nature implanted in them a most tender Affection for their Issue. Now that this Care may be rightly manag'd, it is requisite that they have a Power of ordering the Actions of their Children for their good, because these as yet understand not for want of Discretion how to govern themselves. Next, this Authority is also grounded on the *tacit Consent of their Off-spring*. For it may fairly

fairly be presum'd, that if an Infant at the time of its Birth had the use of Reason, and saw that its Life could not be preserv'd without the Care of the Parents, to which must be join'd a Power over itself, it would readily consent to the same, and desire for itself a comfortable Education from them. And this Power is *actually* in the Parents, then when they breed and nurse up the Child, and form him as well as they can, that he may become a fit Member of Humane Society.

III. *Which Parent has greater Right.*

But whereas the Mother concurs no less than the Father to the Generation of Children, and so the Off-spring is common to both, it may be enquir'd, *which hath the greatest Right thereto.* Concerning which point we are to distinguish, for if the Issue were begotten *not in Matrimony*, the same shall be rather the Mothers, because here the Father cannot be known except the Mother discover him. Among those also who live in a State of *Natural Liberty* and above Laws, it may be agreed that the Mothers claim shall be prefer'd to that of the Father. But in *Communities* which have their Formation from Men, the Matrimonial Contract regularly commencing on the Mans side, and he be-

comming the Head of the Family, the *Fathers Right* shall take place; so as, though the Child is to pay the Mother all Reverence and Gratitude, yet is it not oblig'd to obey her, when she bids that to be done which is contrary to the just Commands of the Father. Yet upon the Fathers Decease his Authority over his Child, especially if not of Age, seems to devolve upon the *Mother*, and if she marry again, it passes to the *Step-Father*, he being esteem'd to succeed to the Trust and Care of a Natural Father. And he who shall allow liberal Education to an Orphan or a forsaken Child, shall have a Right to exact *filial Obedience* from the same.

IV. *Paternal Authority distinguish'd.*

But that we may handle more accurately the *Power of Parents over their Children*, we must distinguish first between *Patriarchs*, or Chiefs of independent Families; and such as are *Members of a Community*: and then betwixt the *Power* of a *Father* as *Father*, and his Power as *Head of his Family*. And whereas it is enjoin'd by Nature to a *Father as such*, that he bring up his Children well, in order to render 'em fit Members of Human Society, so long as till they can take care of themselves; hence he has so much Power given him over them,

as

as is necessary for this End: which therefore by no means extends itself so as to give the Parents liberty to destroy their unborn Off-spring, or to cast away or kill it when it is born. For tho 'tis true, the Issue is of the Substance of the Parents, yet it is placed in a Human State equal to themselves, and capable of receiving Injuries from them. Neither also does this Authority vest them with the Exercise of a Power of Life and Death, upon occasion of any Fault, but only allows them to give moderate Chastisement: since the Age we speak of is too tender to admit of such heinous Crimes as are to be punish'd with Death. But if a Child shall stubbornly spurn at all Instruction, and become hopeless of Amendment, the Father may turn him out of his own House, and abdicate or renounce him.

V. *Childhood.*

MOREOVER, this Power, thus nicely taken, may be consider'd according to the *diverse Age of Children*. For in their *early years*, when their Reason is come to no maturity, all their Actions are subject to the Direction of their Parents. During which time, if any Estate fall to the young Person, it ought to be put into the Possession and under the Administration of the

Father, so that the Property be still reserv'd to the Child: though it may be reasonable enough that the Profits arising therefrom should be the Fathers till the other arrive at Manhood. So also any Advantage or Profit, that can be made by the Labour of a Son, ought to accrew to the Parent; since with the latter lies all the care of maintaining and of educating the former.

VI. *Manhood.* WHEN Children are come to *Man's Estate*, when they are endued with a competent share of Discretion, and yet continue themselves a part of the Fathers Family, then the Power which the Father hath comes distinctly to be consider'd, either as he is a *Father*, or as *Head* of the Family. And since in the former Case he makes his End to be the Education and Government of his Children, it is plain, that when they are of *ripe years* they are to be obedient to the Authority of their Parents as wiser than themselves. And whosoever expects to be maintain'd upon what his Father has, and afterwards to succeed to the Possession of the same, is oblig'd to accommodate himself to the Methods of his Paternal Houshold; the management whereof ought to be in his Fathers power.

PATRI-

PATRIARCHS or Heads of independent Families, before they join'd in Communities, acted in many Cases after the manner of Princes, in their Houses, and their Progeny, who continu'd a part of their Families, paid the highest Veneration to their Authority. But afterwards the Family Royalty (as well as some other private Rights) was moderated for the benefit and Order of Communities; and in some places more, in others less of Power was left to Parents. Hence we see that in some Governments, Fathers have in Criminal cases a power of Life and Death over their Children; but in most it is not allow'd, either for fear Parents should use this Prerogative to the detriment of the Publick, or to the unjust Oppression of those so subjected; or lest through the tenderness of Paternal Affection many Vices should pass unpunish'd, which might break forth one time or other into publick Mischiefs; or else that Fathers might not be under a Necessity of pronouncing so sad and ungrateful a Sentence.

VII. *Patriarchs Power abridg'd.*

XI.

BUT when a *Son or Daughter have left the Fathers House*, and either have set up a new Family of their own, or joined to another; the Paternal Authority indeed ceases, but

VIII. *Piety ever due to Parents.*

but Piety and Observance is for ever due, as being founded in the Merits of the Parents, whom Children can never, or very seldom be supposed to requite. Now these Merits do not consist in this only, that a Parent is to his Child the Author of Life, without which no good can be enjoyed; but that they bestow also a chargeable and painful Education upon them, that so they may become useful Parts of Humane Society; and very often lay up somewhat for them in order to make their Lives more easie and comfortable.

IX. *Education entrusted.*

AND yet though the Education of Children be a Duty laid upon Parents by Nature itself, it hinders not but that, either in case of Necessity or for the benefit of the Children, the Care thereof may by them be *entrusted with another*; so still that the Parent reserve to himself the Oversight of the person deputed. Hence it is, that a Father may not only commit his Son to the *Tutorage* of proper Teachers; but he may give him to another man to *adopt* him, if he perceives it will be advantageous to him. And if he have no other way to maintain him, rather than he should die for want, he may *pawn* him, or *sell* him into some tolerable servitude, reserving

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ing ſtill a liberty of redeeming him, as ſoon as either himſelf ſhall be able to be at the charge, or any of his Kinred ſhall be willing to do it. But if any Parent will inhumanely expoſe and forſake their Child, he who ſhall take it up and educate it ſhall have the *Fatherly Authority* over it; ſo that the Foſter-Child ſhall be bound to pay filial Obedience to his *Educator.*

X. *Marriage with Parents conſent.*

AND as the Father ought not to *turn his Child out of his Family*, while he ſtands in need of Education and Aſſiſtance from him, without the moſt weighty Reaſons; ſo alſo ought not the Son or Daughter leave the Parents Houſe without his Conſent. Now whereas Children frequently leave their Fathers Family on occaſion of Matrimony; and ſince it much concerns Parents what perſons their Children are married to, and from whom they are to expect Grand-Children; hence it is a part of filial Duty, herein to *comply with the Will of the Parents*, and not to marry without their Conſent. But if any do actually contract Matrimony againſt their liking, and conſummate the ſame, ſuch Marriage ſeems not to be void by the Law of Nature, eſpecially if they intend to be no longer burthenſom

thensom to their Parents, and that for the rest their Condition be not scandalous. So that if in any Country such Marriages are accounted null and void, it proceeds from the Municipal Laws of the Place.

XI. *Duty of Parents.* THE Duty of *Parents* consists chiefly in this, that they maintain their Children handsomly, and that they so form their Bodies and Minds by a skilful and wise Education, as that they may become fit and useful Members of Humane and Civil Society, Men of Probity, Wisdom and good Temper. So that they may apply themselves to some fit and honest way of Living, by which they may as their Genius and Opportunity shall offer, raise and increase their Fortunes.

XII. *Duty of Children.* ON the other hand 'tis the Duty of *Children* to honour their Parents, that is, to give them Reverence not only in outward shew, but much more with a hearty Respect, as the Authors not only of their Lives, but of so many other unvaluable Benefits to 'em; to obey 'em; to be assistant to 'em to their utmost, especially if they are aged or in want; not to undertake any business of moment, without deferring to their Advice and Opinion; and lastly to bear with Patience their Morosenes

Moroſeneſs and any other their Infirmities, if any ſuch be.

II.

CHAP. VI.

The Duties of Maſters and Servants.

I. *Servile State how begun.*

AFTER Mankind came to be multiplied, and it was found how conveniently Domeſtic Affairs might be manag'd by the Service of other men; it early became a Practice *to take Servants into a Family* to do the Offices belonging to the Houſe. Theſe at firſt probably offer'd themſelves, driven thereto by Neceſſity or Conſciouſneſs of their own want of Underſtanding; and then being allur'd that they ſhould conſtantly be ſupplied with Food and Neceſſaries, they devoted all their Services for ever to their Maſter. And then Wars raging up and down the World, it grew a Cuſtom with moſt Nations, that thoſe *Captives* to whom they granted their Lives ſhould be made Slaves ever after, together with the Poſterity born of them. Though in many Countries no ſuch Servitude is in uſe; but all Domeſtic Offices

III.

are

are perform'd by Mercenary Servants hired for a certain time.

II. *A temporary Servant.*

NOW as there are several *Degrees*, as it were, of *Servitude*, so the Power of the Masters and the Condition of the Servants do vary. To a *Servant hired* for a time the Duty of the Master is to pay him his *Wages*; the other making good on his part the *Work* as agreed for: And because in this Contract the Condition of the Master is the better, therefore such Servant is also to pay Respect to his Master according to his Dignity; and if he have done his business knavishly or negligently, he is liable to Punishment from him, provided it go not so far as any grievous Maiming of his Body, much less so far as Infliction of Death.

III. *A voluntary perpetual Servant.*

BUT to such a Servant as *voluntarily offers himself to a perpetual Servitude* the Master is obliged to allow perpetual Maintenance and all Necessaries for this Life, it being his Duty on the other hand to give his constant Labour in all Services whereto his Master shall command him, and whatsoever he shall gain thereby, he is to deliver to him. In thus doing however the Master is to have a regard to the Strength and Dexterity of his Servant, not exacting rigorously of him what is above his

his power to do. Now this sort of Servant is not only subject to the Chastisement of his Master for his Negligence, but the same may correct his Manners which ought to be accommodated to preserve Order and Decency in the Family: But he may not kill him against his Will; because he *chose* this for his Master of his own accord, and not another, and it concerns him much with whom he serves. If he have been guilty of any heinous Crime against one not of the same Family, he is subject to the Civil Power, if he live in a Community; but if the Family be independent, he may be expell'd. But if the Crime be against the same Family, it being independent, the Head thereof may inflict even Capital Punishment.

IV. *Captive Slaves.*

CAPTIVES *in War* being made *Slaves*, are frequently treated with greater Severity, something of a hostile Rage remaining towards em, and for that they attempted the worst upon Us and our Fortunes. But as soon as there intervenes a *Mutual Trust*, in order to Cohabitation in the Family, between the Victor and the vanquish'd person, all past Hostility is to be accounted as forgiven: And then the Master does wrong even to a Servant thus

acquir'd,

V. *Alienable.*

VI. *Captive Slaves.*

VII. *Off-spring of Slaves.*

never been born, if the Master had executed the Rigor of War upon the Parent; and for that the Parent having nothing she can call her own, the Off spring cannot otherwise be brought up but at her Masters charge. Whereas therefore the Master afforded such Infant Nourishment, long before his Service could be of any use to him, and whereas all the following Services of his Life could not much exceed the value of his Maintenance, he is not to leave his Master's Service without his Consent. But 'tis manifest, that since these Bondmen came into a State of Servitude not by any fault of their own, there can be no Pretence they should be otherwise dealt withal, than as if they were in the condition of perpetual hired Servants.

Chap. V.

The Impulsive Cause of Constituting Communities.

ALTHOUGH there be hardly any Delight or Advantage, but what may be obtain'd from those Duties, of which we

1. *This Enquiry necessary.*

we have already diſcours'd: It remains nevertheleſs that we enquire into the Reaſons, why Men, not contenting themſelves with thoſe Primitive and ſmall Societies have founded ſuch as are more Ample call'd *Communities*. For from theſe Grounds and Foundations is to be deduc'd the Reaſon of thoſe Duties, which merely relate to this Civil State of Mankind.

II. *Difficulty herein.* HERE therefore it ſuffices not to ſay, that Man is *by Nature enclin'd to Civil Society*, ſo as he neither can nor will live without it. For ſince indeed it is Evident, that man is ſuch a kind of Creature, as has a moſt tender Affection for himſelf and his own Good; it is manifeſt, that when he ſo earneſtly ſeeks after Civil Society, he reſpects ſome particular Advantage that will accrew to him thence. And although without Society with his Fellow-Creatures, Man would be the moſt miſerable of all Creatures; yet ſince the Natural Deſires and Neceſſities of Mankind might be abundantly ſatisfied by thoſe Primitive kind of Societies, and by thoſe Duties to which we are oblig'd either by Humanity or Contracts; it cannot immediately be concluded from this Natural Society between Man and Man, that his

his Nature and Temper does directly encline him to the forming of Civil Communities.

III. *Twofold Enquiry.*

WHICH will more evidently appear; if we consider, what Condition Mankind is plac'd in by the Constitution of *Civil Communities*: What is requir'd that he may be truly said to be a [Political Animal or] *Good Patriot* and *Subject*; and lastly, what *Aversion* may be discover'd in the Nature of Man to living in such *Civil Community*.

IV. *Natural State.*

WHOSOEVER becomes a *Subject*, immediately loses his Natural Liberty, and submits himself to some Authority, which is vested with the Power of Life and Death; and by the Commands of which, many Things must be done, which otherwise he would have been no ways willing to do, and many Things must be let alone, to which he had a strong Inclination; Besides most of his Actions must terminate in the Publick Good, which in many Cases seems to dash with private mens Advantage. But man by his Natural Inclinations is carried to this, to be subject to no one, to do all things as he lists, and in every thing to consult his single Advantage.

V. *Civil State.* BUT we call him a [*Political Animal* or] *True Patriot*, and Good Subject, who readily obeys the Commands of his Governors; who endeavours with his utmost to promote the Publick Good, and after that regards his Private Affairs; nay more who esteems nothing profitable to himself, unless the same be likewise profitable to the Community; lastly, who carries himself fairly towards his Fellow Subjects. But there are few men to be found, whose Tempers are naturally thus well inclin'd. The greater part being restrain'd merely for fear of Punishment; and many continue all their Lifetimes ill Subjects and unsociable Creatures.

VI. *Civil State.* FURTHERMORE, there is no Creature whatsoever more fierce or untameable than Man, or which is prone to more Vices that are apt to disturb the Peace and Security of the Publick. For besides his inordinate Appetite to Eating, Drinking, and Venery, to which Brute Beasts are likewise subject, Mankind is enclin'd to many Vices, to which Brutes are altogether Strangers; as is the unsatiable desire and thirst after those things which are altogether superfluous and unnecessary, and above all to that worst of Evils, Ambition;

bition; also a too lasting resentment and memory of Injuries, and a desire of Revenge increasing more and more by length of time; besides an infinite diversity of Inclinations and Affections, and a certain Stiffness and Obstinacy in every one to indulge his own particular Humour and Fancy. Moreover, Man takes so great delight in exercising his Cruelty over his Fellow-Creatures, that the greatest part of the Evils and Mischiefs, to which Mankind is obnoxious, is wholly owing to the merciless Rage and Violence of other Men.

VII. *Reason of Change.*

THEREFORE the genuine and principal Reason which induc'd Masters of Families to quit their own natural Liberty, and to form themselves into Communities, was; that they might provide for themselves a Security and Defence against the evils and mischiefs that are incident to Men from one another. For as, next under God, one Man is most capable of being helpful to another; so the same may be no less prejudicial and hurtful to one another. And those persons have entertain'd a right conception of the Malice of Men, and the remedy thereof, who have

admitted this as a common Maxim and Proverb; that unless there were Courts of Judicature, one Man would devour another. But after that by the Constituting of Communities, Men were reduc'd into such an Order and Method, that they might be safe and secure from mutual Wrongs and Injuries among themselves, it was by that means provided, that thereby they might the better enjoy those Advantages, which are to be reap'd and expected from one another, to wit, that they might from their Childhood be brought up and instructed in good Manners, and that they might invent and improve several kinds of Arts and Sciences whereby the Life of Man might be better provided and furnished with necessary Conveniences.

VIII. *Farther Penalties.* AND the Reason will be yet more cogent for the Constituting of Communities, if we consider, that other means would not have been capable of curbing the Malice of Men. For although we are enjoyn'd by the Law of Nature not to do any injury one to another; yet the respect and reverence to that Law is not of that prevalence as to be a sufficient security for Men to live altogether quietly and undisturb'd in

in their Natural Liberty. For although, by accident, there may be found ſome few Men of that moderate quiet temper and diſpoſition, that they would do no injury to others, though they might eſcape unpuniſh'd; and there may be likewiſe ſome others that in ſome meaſure bridle in their diſorderly Affections through fear of ſome miſchief that may enſue from thence; yet on the contrary there are a great number of ſuch, as have no regard at all to Law or Juſtice, whenever they have any proſpect of Advantage, or any hopes, by their own ſubtile Tricks and Contrivances of being too hard for, and deluding the injur'd Party. And as it behoves every one, that would take care of his own ſafety, to endeavour to ſecure himſelf againſt this ſort of Perſons; ſo no better care and proviſion can be made than by means of theſe Communities and Civil Societies. For altho ſome particular perſons may mutually agree together to aſſiſt each other; yet unleſs there be ſome way found out, whereby their Opinions and Judgments may be united together, and their Wills may be more firmly bound to the performance of what they have agreed upon, it will be in vain for any one to expect and rely upon

any certain Succour and Assistance from them.

IX. *Advantage of Penalties.* LASTLY, altho the Law of Nature does sufficiently insinuate unto Men, that they, who do any violence or injury to other Men, shall not escape unpunish'd; yet neither the fear and dread of a Divine Being, nor the stings of Conscience are found to be of sufficient efficacy to restrain the Malice and Violence of all Men. For very many Persons, through the prejudice of Custom and Education, are as it were altogether deaf to the force and power of Reason. Whence it comes to pass, that they are only intent upon such things as are present, taking very little notice of those things which are future; and that they are affected only with those things which make a present impression upon their Senses. But since the Divine Vengeance is wont to proceed on but slowly; from whence many ill Men have taken occasion to refer their evils and misfortunes to other Causes; especially since they very often see wicked Men enjoy a plenty and abundance of those things wherein the vulgar sort esteem their Happiness and Felicity to consist. Besides, the checks of Conscience, which precede any wicked Action,

on, seem not to be of that force and efficacy, as that Punishment which follows the Commission of the Fact, when, that which is done, cannot possibly be undone. And therefore the most present and effectual Remedy, for the quelling and suppressing the evil Desires and Inclinations of Men, is to be provided by the Constituting of Civil Societies.

CHAP. VI.

Of the Internal Frame and Constitution of any State or Government.

THE next Enquiry we are to make, is, upon what bottom Civil Societies have been erected, and wherein their *Internal Constitution* does consist. Where in the first place this is manifest, that neither any Place, nor any sort of Weapons, nor any kind of brute Creatures can be capable of affording any better and safer Guard or Defence against the Injuries to which all men are liable by reason of the pravity of Mankind, than is *one Man* to *another*; but since their Power cannot be extended to

I. *Conjunction necessary.*

to Places far remote, it was neceſſary that thoſe, by whom this End was to be obtain'd, ſhould be firmly *joined* together and *aſſociated* into *Communities.*

II. *Numbers neceſſary.* NOR is it leſs evident, that the Conſent and Agreement of *Two* or *Three* particular Perſons cannot afford this Security againſt the Violence of other men: Becauſe it may eaſily happen, that ſuch a number may conſpire the ruin of thoſe *few Perſons*, as may be able to aſſure themſelves of a certain Victory over them; and 'tis very likely they would with the greater boldneſs go about ſuch an Enterpriſe, becauſe of their certain hopes of Succeſs and Impunity. To this end therefore it is neceſſary that a very conſiderable *number* of men ſhould unite together; that ſo the addition of a few men more to the Enemies, may not be of any great moment to determine the Victory on their ſide.

III. *Agreement to be perpetual.* AMONG thoſe many, which join together in order to this End, it is abſolutely requiſite that there be *a perfect Conſent and Agreement concerning the Uſe of ſuch Means as are moſt conducive to the End aforeſaid.* For even a great multitude of Men, if they do not agree among themſelves,

ſelves, but are divided and ſeparated in their Opinions, will be capable of effecting but very little: Or although they may agree for a certain time, by reaſon of ſome preſent Motion or Diſpoſition of the mind; yet as the Tempers and Inclinations of men are very variable, they preſently afterwards may divide into Parties. And although by Compact they engag'd among themſelves, that they would employ all their Force for the common Defence and Security; Yet neither by this means is there ſufficient Proviſion made that this Agreement of the Multitude ſhall be permanent and laſting. But ſomething more than all this, is requiſite, to wit, that they who have once enter'd into a mutual League and Defence for the ſake of the Publick Good, ſhould be debar'd from ſeparating themſelves afterwards, when their private Advantage may ſeem any ways to claſh with the Publick Good.

IV. *Faults herein, how remedied.*

BUT there are Two Faults, which are chiefly incident to Humane Nature, and which are the occaſion that many who are at their own Liberty, and independent one upon the other, cannot long hold together for the promoting of any Publick Deſign. The One is the *Contrariety* of Inclina-

Inclinations and Judgments in determining what is moſt conducive to ſuch an End: to which in many there is join'd a *Dulneſs* in diſcerning that Reſolution, among ſeveral, which may be moſt advantageous, and a certain *Obſtinacy* in defending whatſoever Opinion we have once embrac'd. The other is a certain *Careleſneſs* and *Abhorrence* of doing that freely, which ſeems to be convenient and requiſite, whenſoever there is no abſolute Neceſſity that compels them, whether they will or no, to the performance of their Duty. The Firſt of theſe Defects may be prevented by a Laſting Uniting of all their Wills and Affections together. And the Latter may be remedied by the conſtituting of ſuch a Power as may be able to inflict a preſent and ſenſible Penalty upon ſuch as ſhall decline their Contributing to the Publick Safety.

V. *Union of Wills.* THE Wills and Affections of a great number of Men cannot be united by any better means, than when every one is willing to ſubmit his Will to the Will of One particular *Man*, or One Aſſembly of Men, ſo that afterwards whatſoever he or they ſhall will or determine concerning any Matters or Things neceſſary for the Publick

lick Safety, ſhall be eſteemed as the Will of *All* and every particular Perſon.

VI. *And of Forces.*

Now ſuch a kind of Power, as may be formidable to All, can by no better means be conſtituted among a great Number of Men, than when All and every one ſhall oblige themſelves, to make uſe of their ſtrength after that manner, as he ſhall command, to whom All Perſons muſt ſubmit and reſign the ordering and direction of their united Forces. And when there is an Union made of their Wills and Forces, then this Multitude of men may be ſaid to be animated and incorporated into a Firm and Laſting Society.

VII. *Other Requiſites. One Covenant.*

Moreover, that any Society may grow together after a Regular manner, there are requir'd Two *Covenants*, and One Decree or *Conſtitution*. For firſt, of all thoſe many, who are ſuppos'd to be in a Natural Liberty, when they are join'd together for the forming and conſtituting any Civil Society, every Perſon enters into Covenant with each other, that they are willing to come into one and the ſame laſting Alliance and Fellowſhip, and to carry on the Methods of their ſafety and ſecurity by a common Conſultation and Management among themſelves; in a word, that

that they are willing to be made Fellow-Members of the ſame Society. To which Covenant, it is requiſite, that All and ſingular Perſons do conſent and agree, and he that does not give his Conſent, remains excluded from ſuch Society.

VIII. *Conſtitution.* AFTER this *Covenant* it is neceſſary, that there ſhould be a Conſtitution agreed on by a Publick Decree ſetting forth, what *form* of *Government* is to be pitch'd upon. For till this be determin'd, nothing with any certainty can be tranſacted, which may conduce to the Publick Safety.

IX. *Another Covenant.* AFTER this Decree concerning the *Form* of *Government*, there is occaſion for another *Covenant*, when he or they are nominated and conſtituted, upon whom the Government of this Riſing Society is conferr'd: by which Covenant the Perſons that are to Govern do oblige themſelves to take care of the common Safety, and the other Members do in like manner oblige themſelves to yield Obedience to them; whereby alſo all Perſons do ſubmit their Will to the Will and Pleaſure of him or them, and they do at the ſame time convey and make over to him or them the Power of making uſe of and applying their united ſtrength as ſhall ſeem moſt convenient for the

the Publick Security. And when this Covenant is duly and rightly executed, thence at last arises a *Compleat* and *Regular Government.*

X. *A Community defined.* A Civil Society and Government thus constituted is look'd upon as if it were but *One Person*, and is known and distinguish'd from every particular man by one *Common Name*, and it has peculiar Rights and Priviledges, which neither Each one alone, nor Many, nor All together can claim to themselves, without him, who is the Supreme, or to whom the Administration of the Government is committed. Whence a Civil Society is defin'd to be, One Person morally incorporated, whose Will containing the Covenants of many united together, is look'd upon and esteem'd as the Will of All, so that he is in a Capacity of making use of the Strength and Power of every particular Person for the Common Peace and Security.

XI. *How subjected to One.* Now the Will and Intention of any Constituted Government or Society exerts itself, as the Principle of Publick Actions, either by one particular Person, or by one Council or Assembly, according as the Power of managing Affairs is confer'd on him or on such an Assembly. Where the

Government of the State is in the power of One man, the said Society is suppos'd to will, whatsoever shall be the Will and Pleasure of that Man, allowing that he is in his perfect Senses; and it being about those Affairs which only relate to Government.

XII. *How to many.*

BUT when the Government of a State is conferr'd upon a *Council*, consisting of several Men, every one of them retaining his own Natural Free Will; that regularly is esteem'd to be the Will and Pleasure of the State, whereto the *Major Part* of the Persons, of whom the Council is compos'd, does give their Assent; unless it be expresly declar'd, how great a Part of the Council consenting is requir'd to represent the Will of the whole. But where two differing Opinions are equally ballanc'd on both sides, there is nothing at all to be concluded upon, but the Affair still remains in its former State. When there are several differing Opinions, that shall prevail, which has more Voices than any of the other differing Opinions, provided so many concur therein, as otherwise might have represented the Will and Pleasure of the whole, according to the Publick Constitutions.

XIII. *Various Forms of Governm.*

A State or Government being thus conſtituted, the Party on whom the Supreme Power is conferr'd, either as it is a ſingle Perſon, or a Council conſiſting of Select Perſons, or of all in General, is call'd a *Monarchy*, an *Ariſtocracy*, or a *Free State*; the reſt are look'd upon as Subjects, or Citizens, the word being taken in the moſt comprehenſive Senſe: Although in ſtrictneſs of ſpeech ſome call only thoſe Citizens, who firſt met and agreed together in the forming of the ſaid Society, or elſe ſuch who ſucceeded in their Place, to wit, Houſe-holders or Maſters of Families. Moreover, Citizens are either Originally ſo, or ſuch as are born in the Place, and upon that account claim their Priviledges, or elſe Adſcititious, or ſuch as come from forein Parts. Of the firſt ſort are either thoſe who at firſt were preſent and concern'd in the forming the ſaid Society, or their Deſcendents, whom we call *Indigenæ* or Natives. Of the other ſort are thoſe who come from forein Parts in order to ſettle themſelves there. As for thoſe who come thither only to make a ſhort ſtay, although they are for that time ſubject to the Laws of the Place; nevertheleſs they are not look'd upon as Citizens, but

are call'd *Strangers* or Sojourners.

XIV. *Government from God.* NOT that what we have deliver'd concerning the Original of Civil Societies, does any ways hinder, but that *Civil Government* may be truly ſaid to be from *God*. For it being his Will, that the Practices of Men ſhould be order'd according to the *Law of Nature*; and yet, upon the Multiplication of Mankind, Human Life would have become ſo horrid and confuſed, that hardly any room would have been left for the ſame to exert its Authority; and ſeeing the Exerciſe thereof would be much improv'd by the Inſtitution of Civil Societies; therefore (ſince he who commands the End, muſt be ſuppoſed to command likewiſe the Means neceſſary to the ſaid End,) God alſo by the mediation of the Dictates of Reaſon is to be underſtood antecedently to have will'd that Mankind when they were multiply'd, ſhould erect and conſtitute Civil Societies, which are, as it were, animated with a Supreme Authority. The Degrees whereof he expreſly approves in Divine Writ, ratifying their Divine Inſtitution by Peculiar Laws, and declaring that himſelf takes them into his eſpecial Care and Protection.

CHAP.

Chap. VII.

Of the ſeveral Parts of Government.

I. WHAT are the Conſtituent *Parts* of Supreme Power, and by what *Methods* it exerts its Force in Civil Societies, may eaſily be gather'd from the Nature and End of the ſaid Societies.

II. *Will of the Supreme to be made known.* In a Civil Society all Perſons are ſuppos'd to have ſubmitted their Will to the Will and Pleaſure of the Governours, in ſuch Affairs as concern the Safety of the Publick, being willing to do whatſoever they require. That this may be effected, it is neceſſary, that the Governours do *ſignifie* to thoſe who are to be govern'd, what their Will and Pleaſure is concerning ſuch Matters. And this they do not only by their *Commands* directed to particular Perſons about particular Affairs; but alſo by certain general *Rules*, whence all Perſons may at all times have a clear and diſtinct Knowledg of what they are to do or to omit. By which likewiſe it is commonly defin'd and determin'd what ought to be look'd upon to be each Man's Right and Propriety, and what does properly belong

to Another, what is to be eſteem'd Lawful, and what Unlawful in any Publick Society, what Commendable or what Baſe; what every man may do by his own Natural Liberty, or how every one may diſpoſe and order his own particular Rights towards the advancement of the common Peace and Tranquillity; In fine, what and after what manner every one by Right may lay claim to from another. For it conduces very much to the Peace and Proſperity of any Civil Society, that all theſe things ſhould be clearly and plainly laid down and determin'd.

III. *Penalty.* MOREOVER, this is the Chief *End* of Civil Societies, that Men by a mutual Agreement and Aſſiſtance of one another might be ſecur'd againſt the Injuries and Affronts which may and very often do befal us by the Violence of other men. Now that this End may the better be obtain'd by thoſe Men, with whom we are link'd together in the ſame Society; it is not ſufficient, that they ſhould mutually agree among themſelves not to injure one Another; nor is it enough that the bare Will and Pleaſure of the Supreme Magiſtrate ſhould be made known to them; but 'tis likewiſe requiſite that there ſhould be a certain

certain Fear and Dread of *Puniſhment*, and a Power and Ability of inflicting the ſame. Which *Puniſhment* or *Penalty*, that it may be ſufficient for this End, is to be ſo order'd; that there may plainly appear a greater Damage in violating the Laws than in obſerving them; and that ſo the *Sharpneſs* and *Severity* of the Penalty may outweigh the *Pleaſure* and *Advantage*, gotten or expected by doing the Injury. Becauſe it is impoſſible but that of two Evils men ſhould chuſe the Leaſt. For although there are many men who are not reſtrain'd from doing Injuries by any proſpect of Puniſhment hanging over their heads, yet that is to be look'd upon as a Caſe that rarely happens; and ſuch as conſidering the preſent Condition and Frailty of Mankind, cannot be wholly avoided.

IV. *Controverſies.*

BECAUSE alſo it very often happens that many Controverſies do ariſe about the *Right Application* of the Laws to ſome particular Matters of Fact, and that many Things are to be nicely and carefully conſider'd in order to determine whether ſuch a Fact may be ſaid to be againſt Law; therefore, in order to the eſtabliſhment of Peace and Quietneſs amongſt the Subjects, it is the part of the Supreme Governour to

take cognisance of and determine the *Controversies* arising between Subject and Subject, and carefully to examine the Actions of Particular Persons which are found to be contrary to Law, and to pronounce and execute such Sentence as shall be Agreeable to the same Law.

V. *Power of Peace and War.*

BUT that those, who by mutual Agreement have constituted a Civil Society, may be safe against the Insults of Strangers, the Supreme Magistrate has Power to *assemble*, to *unite* into a Body, and to *Arm*, or instead of that to list as many Mercenaries as may seem necessary, considering the uncertain Number and Strength of the Enemy, for the maintaining the Publick Security; and it is likewise entirely left to the Discretion of the same Magistrate to make Peace whenever he shall think convenient. And since both in times of Peace and War *Alliances* and *Leagues* with other Princes and States are of very great Use and Importance, that so the different Advantages of divers States and Governments may the better be communicated to each other, and the Enemy by their joint Forces may be repuls'd with the greater Vigor, or be more easily brought to Terms; it is also absolutely in the Power of

of the Supreme Magiſtrate to enter into ſuch *Leagues* and *Treaties* as he ſhall think convenient to each Occaſion, and to oblige all his Subjects to the obſervation of them, and at once to derive and convey down to the whole Civil Society all the Benefits and Advantages thence ariſing.

VI. *Publick Officers.* SEEING alſo the Affairs of any Conſiderable State as well in time of War as Peace cannot well be manag'd by one Perſon, without the aſſiſtance of ſubordinate *Miniſters* and *Magiſtrates*, it is requiſite that able Men ſhould be appointed by the Supreme Magiſtrate to decide and determine in his room the Controverſies ariſing between Subject and Subject, to enquire into the Counſels of the Neighbouring Princes and States, to govern the Soldiery, to collect and diſtribute the Publick Revenue, and laſtly in every Place to take ſpecial care of the common Good. And from each of theſe Perſons the Supreme Magiſtrate may and ought to exact the Performance of their Duty, and require an Account of their Behaviour in their reſpective Stations.

VII. *Taxes.* AND becauſe the Concerns of any Civil Society can neither in time of War nor Peace be manag'd without *Expences*, the Supreme Authority has power to com-

pel the Subjects to provide the same. Which is done several ways; either when the Community appropriates a certain Portion of the Revenues of the Country they possess, for this Purpose; or when each Subject contributes something out of his own Estate, and if occasion requires, gives also his Personal Help and Assistance; or when Customs are set upon Commodities imported and exported, (of which the first chiefly affects the Subjects, and the other Foreiners,) Or lastly, when some moderate Tax is laid on those Commodites which are spent.

VIII. *Publick Doctrines.* To conclude, since the Actions of Each Person are govern'd by his own particular Opinion: and that most People are apt to pass such a judgment upon Things as they have been accustomed unto, and as they commonly see other People judg; so that very few are capable of discerning what is just and honest; upon this account therefore it is expedient for any Civil Society, that such kind of Doctrines should be publickly taught, as are agreeable to the Right End and Design of such Societies, and that the minds of the Inhabitants should be seasoned betimes with these Principles. It does therefore belong to the Supreme

preme Magiſtrate to conſtitute and appoint fitting Perſons to inform and inſtruct them publickly in ſuch Doctrines.

XV. *All theſe Parts concentred.*

Now theſe ſeveral parts of Government are naturally ſo connected, that to have a Regular Form ſuitable to any Civil Society, all theſe Parts thereof ought radically to center in One. For if any Part be wanting, the Government is defective, and uncapable of procuring its End. But if theſe ſeveral Parts be divided, ſo that ſome of them be radically here, and others there, hence of Neceſſity will follow an irregular and incoherent State of Things.

Chap. VIII.

Of the ſeveral Forms of Government.

I. *Divers Forms.*

THE Supreme Power conſider'd either as it reſides in a ſingle *Man*, or in a ſelect *Council* or *Aſſembly* of men, or of *all* in General, produces diverſe Forms of Government.

II. *Regular and Irregular.*

Now the Forms of Government are either *Regular* or *Irregular*. Of the firſt ſort

ſort are thoſe, where the Supreme Power is ſo united in one particular Subject, that the ſame being firm and entire, it carries on by one *Supreme Will* the whole Buſineſs of Government. Where this is not found, the Form of Government muſt of neceſſity be *Irregular*.

III. *Three Regular Forms.* THERE are Three *Regular* Forms of Government: The Firſt is, when the Supreme Authority is in *one Man*; and that is call'd a *Monarchy*. The ſecond, when the ſame is lodg'd in a ſelect *Number* of Men, and that is an *Ariſtocracy*. The Third, when it is in a Council or Aſſembly of Free-holders and Principal Citizens, and that is a *Democracy*. In the Firſt, he who bears the Supreme Rule, is ſtil'd a *Monarch*, in the Second the *Nobles*, and in the Third the *People*.

IV. *Forms compared.* IN all theſe Forms the Power is indeed the ſame. But in one reſpect *Monarchy* has a conſiderable Advantage above the reſt, that in order to deliberate and determine, that is, actually to exerciſe the Government, there is no neceſſity of appointing and fixing certain Times and Places; but he may deliberate and determine in any Place and at any Time; ſo that a Monarch is always in a readineſs to perform the neceſ-

neceſſary Actions of Government. But that the Nobles and the People, who are not as one Natural Perſon, may be able ſo to do, it is neceſſary that they meet at a certain Time and Place; there to debate and reſolve upon all Publick Buſineſs. For the Will and Pleaſure of a Council, or of the People, which reſults from the Majority of Votes conſenting, can no otherwiſe be diſcover'd.

V. *A diſtemper'd State.*

But as it happens in other matters, ſo in Governments, that the ſame may be ſometimes well, and at other times ſcurvily and fooliſhly manag'd. Whence it comes to paſs, that ſome States are reputed *Sound*, and others *Diſtemper'd*: Not that on Account of ſuch kind of Imperfections, there is any neceſſity of ſetting up any Peculiar Forms of Government. But theſe Diſtempers of Civil Societies ſometimes are in the *Perſons*, and ſometimes in the *Conſtitution* it ſelf. Whence the Firſt are ſtil'd Imperfections of the *Men*, and the Latter, Imperfections of the *State*.

VI. *Monarchy.*

The Imperfections of the Men in a *Monarchy* are, when he who poſſeſſes the Throne, is not well skill'd in the Arts of Ruling, and takes none or but a very ſlight Care for the Publick Good, proſtituting the

the ſame to be torn in pieces and ſacrific'd to the Ambition or Avarice of Evil Miniſters; when the ſame Perſon becomes terrible by his Cruelty and Rage; when alſo he delights without any real neceſſity to expoſe the Publick to Danger; when he ſquanders away, by his Luxury and profuſe Extravagance, thoſe Supplies which were given for the ſupport of the Publick; when he heaps up Treaſure unreaſonably extorted from his Subjects; when he is Inſolent, Haughty or Unjuſt; or guilty of any other ſcandalous Vice.

VII. *Ariſtocracy.* THE Imperfections of the Men in an *Ariſtocracy* are, when by Bribery and baſe Tricks Ill men and Fools get into the Council, and Perſons much more deſerving than they, are excluded; When the Nobles are divided into ſeveral Factions; when they endeavour to make the Common People their Slaves, and to convert the Publick Stock to their Private Advantage.

VIII. *Men in a Democracy.* THE Imperfections of the Men in a *Democracy* are, when Silly and Troubleſom Perſons ſtickle for their Opinions with great Heat and Obſtinacy; when thoſe Excellencies which are rather beneficial than hurtful to the Common-wealth are depreſt and

and kept under; when, through Inconſtancy, Laws are raſhly eſtabliſh'd and as raſhly annull'd, and what but juſt now was very pleaſing is immediately without any Reaſon rejected: and when baſe Fellows are promoted in the Government.

IX. *Men in any Government.*

THE Imperfections of the Men, which may promiſcuouſly happen in any Form of *Government*, are; when thoſe who are entruſted with the Publick Care, perform their Duty either amiſs or ſlightly; and when the Subjects, who have nothing but the Honour of Obeying, grow reſtiff and ungovernable.

X. *Faults in a Conſtitution.*

BUT the Imperfections of any *Conſtitution* are, when the Laws thereof are not accommodated to the Temper and Genius of the People or Country; or when the Subjects make uſe of them for fomenting inteſtine Diſturbances or for giving unjuſt Provocations to their Neighbours; or when the ſaid Laws render the Subjects uncapable of diſcharging thoſe Duties that are neceſſary for the preſervation of the Publick; for inſtance, when through their defect the People muſt of neceſſity be diſſolv'd in Sloth, or render'd unfit for the enjoyment of Peace and Plenty; or when the Fundamental Conſtitutions are order'd after

ter such a manner that the Affairs of the Publick cannot be dispatched but too slowly and with difficulty.

XI. *How call'd.*

To these distemper'd *Constitutions*, men have given certain Names; as a corrupt Monarchy is call'd *Tyranny*, a corrupt Aristocracy is stil'd an *Oligarchy*, or a Rump-Government. And a corrupt *Popular State* is call'd an *Anarchy*, or a Rabble-Government. Although it often happens, that many by these Nick-names do not so much express the Distemper of such a Government, as their own Natural Aversion for the present Governours and Constitution. For often-times he who is dissatisfied with his *King*, or a *Monarchical Government*, is wont to call even a Good and Lawful Prince, a Tyrant and Usurper, especially if he be strict in putting the Laws in Execution. So he who is vex'd because he is left out of the Senate, not thinking himself Inferior to any of the other Counsellors, out of Contempt and Envy he calls them a Pack of assuming Fellows, who though in no respect they excel any of the Rest, yet domineer and lord it over their Equals, nay over Better men than themselves. Lastly, those men who are of a haughty Temper, and who hate a

Popular

Popular Equality, ſeeing that all People in a Democracy have an equal Right to give their Suffrages in publick Affairs, tho in every Place the common People makes the greateſt Number, they condemn that as an *Ochlocracy*, or Government by the Rabble, where there is no Preference given to Perſons of Merit, as they, forſooth, eſteem themſelves to be.

XII. *An Irregular State.*

AN *Irregular Conſtitution* is, where that Perfect Union is wanting, in which the very Eſſence of a Government conſiſts: And that not through any Fault or Male-Adminiſtration of the Government, but becauſe *this Form* has been receiv'd as Good and Legitimate by Publick Law or Cuſtom. But ſince there may be Infinite varieties of Errors in this Caſe, it is impoſſible to lay down diſtinct and certain Species of Irregular Governments. But the Nature thereof may be eaſily underſtood by one or two Examples; for inſtance, if in a State the Nobles and the People are each veſted with a Supreme and unaccountable Power; Or if in any Nation the Nobles are grown ſo great that they are no otherwiſe under the King, than as unequal Confederates.

XIII. *Union of several Communities.*

WE call those *Unions* when several Constituted Societies by some special Tie are so conjoin'd, that their Force and Strength may be look'd upon in effect as the United Force and Strength of one Civil Society. Now these Unions may arise two several ways: the one by a *Common Sovereign*, the other by *League* or *Confederacy*.

XIV. *Union by a common Sovereign.*

SUCH a *Union* happens, by means of a Common Sovereign, when divers separate Kingdoms, either by Agreement, or by Marriage, or hereditary Succession, or Victory, come to be subject to the same King; yet so that they do not close into one Realm, but each are still govern'd by the same Common Sovereign, according to their own Fundamental Laws.

XV. *Union by Confederacy.*

ANOTHER sort of *Union* may happen, when several Neighboring States or Governments are so connected by a perpetual League and Confederacy, that they cannot exercise some Parts of the Supreme Power, which chiefly concern their Defence and Security against Strangers, but by a general Consent of them All: Each Society nevertheless, as to other matters, reserving to its self its own Peculiar Liberty and Independency.

CHAP.

Chap. IX.

The Qualifications of Civil Government.

I. *Supreme Authority.*

IT is always one Prerogative of the Government by which any Community is directed in every form of Commonwealth whatſoever, *to be inveſted with the Supreme Authority*: whereby it has the regulating of all things according to its own Judgment and Diſcretion, and acts without dependence upon any Superiour, that can pretend to annul or countermand its Orders.

II. *Unaccountable.*

FOR the ſame Reaſon, a Government ſo conſtituted remains *unaccountable to all the World*: there being no Authority *above* it to puniſh it, or to examine whether its proceedings are right or no.

III. *Above the Laws.*

AND a *third qualification* of like nature with the former, is, that inaſmuch as all Civil Laws, of humane Authority, derive both their Beginning and their Continuance from the favour of the Government; it is impoſſible they ſhould directly *oblige the very Power that makes them*; becauſe the ſame Power would in conſe-

quence be ſuperiour to it ſelf. Yet it is a happy Proſpect and a ſingular advantage to the Laws, when a Prince conforms himſelf of his own pleaſure, as occaſion ſerves, to practiſe the ſame things that he commands his Subjects.

IV. *Obedience due to it.* THERE is alſo a peculiar *Veneration* to be paid to the Supreme Government, under which we live: not only in obeying it in its juſt Commands, wherein it is a Crime to diſobey, but in *enduring its Severities* with the like Patience, as the rigor of ſome Parents is ſubmitted to by dutiful Children. Wherefore when a Prince proceeds to offer the moſt heinous Injuries imaginable to his people, let them rather undergo it, or every one ſeek his ſafety by flight, than draw their Swords upon the Father of their Country.

V. *An abſolute Monarchy.* WE find, in Monarchies and Ariſtocracies eſpecially, that the Government is ſometime *Abſolute* and ſometime *Limited*. An *abſolute* Monarch is one, who having no preſcribed form of Laws and Statutes perpetually to go by in the method of his Adminiſtration, proceeds entirely according to his own Will and Pleaſure, as the condition of Affairs and the publick Good in his judgment ſeem to require.

BUT

VI. *A limited Monarchy.*

BUT because a single Person may be subject to be mistaken in his Judgment, as well as to be seduced to evil Courses in the enjoyment of so vast a Liberty; it is thought convenient by some States, to circumscribe the exercise of this Power within the *limits of certain Laws*, which are proposed to the Prince at his Succession to be the future Rule of his Government. And particularly when any Extraordinary Concern arises, involving in it the Interest of the whole Kingdom, for which there can be no provision extant in the Constitutions foregoing: They then oblige him to engage in nothing without the previous Advice and Consent of the People, or their *Representatives in Parliament*; the better to prevent the danger of his swerving from the Interest of the Kingdom.

VII. *Right and Manner of holding.*

WE see likewise a difference in the *right and manner of holding* some Kingdoms, from what it is in others. For those Princes especially as have acquired Dominions by Conquest and made a People their own by force of Arms, can *divide*, *alienate*, and *transfer* their Regalities at pleasure in the manner of a patrimonial Estate. Others that are advanced by the Voice of the

People, though they live in full poſſeſſion of the Government during their Reigns, yet have no pretenſions to ſuch a Power. But as they attained to the Succeſſion, ſo they leave it, to be determin'd either by the ancient Cuſtom or the fundamental Laws of the Kingdom: for which reaſon they are compared by ſome to Uſufructuaries or Life-Renters.

CHAP. X.

How Government, eſpecially Monarchical, is acquired.

I. *Conſent of the Subject, free or forced.*

ALTHOUGH the *Conſent of the Subject* is a thing to be required in Conſtituting of every lawful Government, yet it is not always obtain'd the ſame way. For as it is ſometimes ſeen, that a Prince aſcends the Throne with the *voluntary Acclamations of the People*; ſo ſometimes he makes himſelf a King by *Conqueſt*, and brings a People to conſent by *Military force*.

WHICH

WHICH latter Method of acquiring a Government is called *Conqueſt*: it happening, as often as a Victorious Prince, having Fortune on his ſide and a juſt Cauſe, reduces a People by his Arms to ſuch Extremities, as compel them to receive him for their Governour. And the Reaſon of this Title is derived, not only from the Conquerours Clemency in ſaving the Lives of all thoſe whom in ſtrictneſs of War he was at liberty to deſtroy, and inſtead thereof laying only a leſſer inconvenience upon them; but likewiſe from hence, that when a Prince will chooſe to go to War with one that he has injured, rather than he will condeſcend to ſatisfie him in a juſt and equal manner; He is to be preſum'd to caſt himſelf upon the fortune of War with this intention, that he does beforehand *tacitly* conſent to accept of any Conditions whatſoever ſhall befal him in the Event. II. *Of Conqueſt.*

AS for the *Voluntary Conſent of the People*, a Government is acquired by it, when in an *Election* the People either in order to their Settlement, or at any time after, do nominate ſuch a One to bear that Office as they believe is capable of it. Who, upon preſentation of their Pleaſure to III. *Election.*

him, accepting it; and also receiving their promises of Allegiance; he thereby actually enters upon the Possession of the Government.

IV. *An Interregnum.* BUT betwixt this Election of a new Prince and the Death of the former, there uses in Monarchies that are already fix'd and settled to intercede an *Interregnum*; which signifies an imperfect kind of State, where the People keep together merely by Virtue of their *Original Compact*: Only that this is much strengthned by the common Name and love of their Country, and the settlement of most of their Fortunes there; whereby all good Men are obliged to preserve the Peace with one another, and study to restore their fallen Government again as soon as they can. Yet to prevent the mischiefs which are apt to arise in *Interregnums*, it is very convenient the Law should provide *Administrators*, to manage the publick Affairs during the vacancy of the Crown.

V. *Succession.* NOW tho, as is said, in some Monarchies; as every King dies, they proceed again to a *new Election*: Yet in others the Crown is conferred upon Conditions to descend to certain Persons *successively*, (without any intervening Election) for all time to come.

The

The right to which Succeſſion may either be determined by the *order of the Prince*, or the *order of the People*

VI. *Deviſable when.*

WHEN Princes hold their Crowns in the manner *of a Patrimony*; they have the liberty of *diſpoſing of the Succeſſion as themſelves pleaſe*. And their declared Order therein, eſpecially if their Kingdoms are of their own founding or acquiring, ſhall carry the ſame force with the laſt Teſtament of any private Man. They may divide, if they pleaſe, their Kingdom amongſt all their Children, not ſo much as excepting the Daughters. They may, if they think fit, make an Adoptive or their Natural Son their Heir, or one that is not in the leaſt akin to them.

VII. *Succeſſion upon an Inteſtate.*

AND when ſuch an Abſolute Monarch as this dies, without leaving order for the Succeſſion; It is to be preſumed he did not thereby intend the Kingdom ſhould Expire with himſelf; but *firſt*, that it ſhould devolve to his Children (before all others), becauſe of the natural Affection of Parents to them. *Then*, *That* the ſame Monarchical Government ſhall continue, which he recommended by his own Example. *That* the Kingdom be kept undivided, as one Realm; becauſe any Divi-

ſion thereof muſt give occaſion to great Troubles both among the Subjects and the Royal Family. *That* the Elder reign before the Younger, and the Male before the Female in the ſame Line: And laſtly, *That* in default of Iſſue the Crown ſhall devolve upon the next in Blood.

VIII. *Succeſſion in the People.*

BUT in thoſe Monarchies, whoſe Conſtitution from the very Beginning was founded upon the voluntary Choice of the People, there the *Order of Succeſſion muſt have an Original Dependence upon the Will of the ſame People.* For if, together with the Crown, they did confer upon the Prince the Right of appointing his Succeſſour; whoſoever ſhall be nominated to the Succeſſion by him, will have all the Right to enjoy it. If they did not confer it upon the Prince, it is to be underſtood as reſerved to themſelves. Who, if they pleaſed, might make the Crown Hereditary to their Princes Family: either preſcribing the Order of Succeſſion to be like other ordinary *Inheritances*, ſo far as can conſiſt with the Publick Good; or ſet the ſame under any peculiar neceſſary *Limitations.*

IX. *Of Hereditary Kingdoms.*

WHEN a People have barely conferr'd upon their King an hereditary Right, without

out any thing farther expreſs'd; Though 'tis true it may ſeem to be intended, that the Crown ſhall paſs to the Heirs in the ſame common order of Deſcent as private Inheritances do; Yet the publick Good requires, that the ſenſe of ſuch a Publick Act ſhall be taken under ſome *reſtrictions*, notwithſtanding their not being particularly expreſs'd. As 1. It is ſuppoſed, *That* the Kingdom ſhall continue inſeparable, as one Realm. 2. *That* the Succeſſion ſhall go to the Deſcendants of the firſt Prince of the Line. Excluding 3. Illegitimate and adopted Children, with all that are not born according to the Laws of the Realm. 4. *That* the Heirs male be preferr'd before the female in the ſame Line, tho their Inferiours in Age. And 5. *That* each Prince eſteem his Succeſſion, not as the Gift of his Predeceſſor, but as the bounty of the People.

X. *A Lineal Succeſſion.*

Now becauſe after a long Deſcent of Princes, there may eaſily ariſe Controverſies almoſt inextricable, about the perſon of the Royal Family, who approaches neareſt in kindred to the Prince deceaſed; therefore, for prevention of ſuch, in many Kingdoms they have introduced *a lineal Succeſſion*, of this nature; *That* as every one deſcends from the Father of the Stem Royal,

Royal, they compoſe as it were a perpendicular Line; from whence they ſucceed to the Crown, according to the priority of that Line to others: And though perhaps the neareſt of Kin to the Prince laſt deceaſed may ſtand in a *new* Line, different from that of *His*; Yet there is no paſſing out of the old Line thither, till Death has exhauſted the ſame.

XI. *By the Fathers ſide, or the Mothers.*

THE Series of Succeſſion moſt regardable, are thoſe two, deduced from the ſeveral *families of the Father and the Mother*: the Relation whereof is diſtinguiſh'd in the Civil Law by the names of *Cognation* and *Agnation*. The Firſt does not exclude the Women, but only poſtpones them to Males in the ſame Line; for it recurrs to them in the caſe of the others *default*. But by the ſecond, both the Women and all their Iſſue, even Males, are excluded for ever.

XII. *Differences about Succeſſion, how to be.*

WHEN in a Patrimonial Kingdom there ariſes a Diſpute concerning the Succeſſion, the moſt adviſeable way to determine it, is to put it to the Arbitration of ſome of the Royal Family; And where the Succeſſion originally depended upon the Conſent of the People, there their Declaration upon the matter will take away the doubt.

CHAP.

Chap. XI.

The Duty of Supreme Governours.

I. IF we conſider what is the End and Nature of Communities, and what the parts of Government, it will be eaſie from thence to paſs a judgment upon the Rules and Precepts wherein conſiſts the Office of a Prince.

II. *Their proper Studies, and Converſation.* BEFORE all things it is requiſite, that he apply himſelf with the utmoſt Diligence to the ſtudy of *whatever may conduce to give him a perfect comprehenſion of the Affairs belonging to a perſon in his Station:* becauſe no man can manage a place to his Honour, which he does not rightly underſtand. He is therefore to be ſequeſtred from thoſe remote and forein Studies, which make nothing to this purpoſe. He muſt abridg himſelf in the Uſe of Pleaſures and vain Paſtimes, that would divert his Attention from this Mark and End. And for his more *familiar Friends*, inſtead of Paraſites, and Triflers, or ſuch as are accompliſh'd in nothing but Vanities, (whoſe Company ought utterly to be

be rejected;) Let him make choice of men of Probity and Senſe, experienced in Buſineſs and skilful in the ways of the World: being aſſured, that until he throughly underſtands as well the Condition of his own State as the diſpoſition of the People under him, he will never be able to apply the general Maxims of *State-Prudence*, to the Caſes that will occur in Government, in ſuch a manner as they ought. More eſpecially let him ſtudy to be excellent in Virtues, that are of the greateſt uſe and luſtre in the exerciſe of his vaſt Charge; and ſo compoſe the manners of his Life, that they may be anſwerable to the height of his Glory.

III. *The Publick Good, the Supreme Law.*

THE moſt general Rule to be obſerved by Governours, is this; *The Good of the Publick is the Supreme Law of all.* Becauſe in conferring the Government upon them, what is there elſe intended, but to ſecure the common End for which Societies were inſtituted in the beginning? From whence they ought to conclude, that whatſoever is not expedient for the Publick to be done, neither is it expedient for themſelves.

AND

AND it being neceſſary in order to preſerve a people at peace with one another, that the Wills and Affections of them ſhould be diſpoſed and regulated, according as it is moſt proper for the Publick Good; There ought to be ſome *ſuitable Laws* for the purpoſe preſcribed by Princes, and alſo a *publick Diſcipline* eſtabliſhed with ſo much ſtrictneſs, that Cuſtom as well as fear of Puniſhment may be able to confine men to the practice of their their Duty. To which end it is convenient to take care, that the Chriſtian Religion after the moſt pure and moſt uncorrupt way be profeſs'd by the Subjects of every Realm or Community; and that no Tenets be publickly taught in the Schools, that are contrariant to the deſigns of Government. IV. *Laws, Diſcipline, and Religion.*

IT will conduce to the advancement of the ſame end, if in the Affairs which are wont to be moſt frequently negotiated betwixt the Subjects, the Laws which are preſcribed are *clear, and plain*; and *no more in Number* than will promote the good of the Kingdom and its Members. For conſidering that men uſe to deliberate upon the things they ought or ought not to do, more by the ſtrength of their natural Reaſon, V. *The Laws, plain and few.*

ſon, than their underſtanding in the Laws; whenever the Laws do ſo abound in Number as not eaſily to be retain'd in Memory, and are ſo particular in their Matter, as to prohibit things which are unprohibited by the light of Reaſon, it muſt certainly come to paſs, that innocent Perſons, who have not had the leaſt ill intention to tranſgreſs the Laws, will be many times unknowingly hamper'd by them, as by Snares, to their unreaſonable prejudice, againſt the very end of Societies and Government.

VI. *And duly executed.*

YET it is in vain for Princes to make Laws, and at the ſame time ſuffer the violation of them to paſs with impunity. They muſt therefore *cauſe them to be put in Execution,* both for every *honeſt Perſon* to enjoy his Rights without Vexation, Evaſions, or Delays; and alſo for every *Malefactor* to receive the puniſhment due to the quality of his Crime, according to the intention and malice in the committing it. They are not to extend their Pardons to any without ſufficient reaſon. For it is an unjuſt practice, which tends greatly to irritate the minds of people againſt the Government, not to uſe Equality (all Circumſtances conſidered) towards perſons

ſons that are Equal in their deſervings.

AND as nothing ought to be Enacted under a *Penalty*, without the conſideration of ſome *profit* to the Common-wealth; So in the *fixing of Penalties proportionably to that end*, it is fitting to obſerve a Moderation; with care, that the damage thence ariſing to the Subject on the one hand, exceed not the advantage that redounds to the Common-wealth on the other. In fine, to render Penalties effectual in obtaining the end intended by them, it is clear they ſhould ſtill be magnified to ſuch a degree, as by their ſeverity to out-weigh the contrary gain and pleaſure that is poſſible to proceed from chooſing the Crime. VII. *Penalties.*

MOREOVER, inaſmuch as the deſign of people in incorporating together in a Common-wealth, is their ſecurity from harms and Violence; it is the Duty of the Supreme Magiſtrate to *prohibit any injury of one Subject to another* ſo much the more ſeverely, becauſe by their conſtant Cohabitation in the ſame place they have the ſtrer opportunities to do them or to reſent them. Remembring, that no diſtinctions of Quality or Honour derive the leaſt pretence to the greater to inſult over the VIII. *Injuries.*

the leſs at their pleaſure. Neither has any Subject whatſoever the liberty to ſeek his ſatisfaction for the Injuries, he preſumes are done him, in the way of a private Revenge. For the deſign of Government is deſtroy'd by ſuch a Proceeding as this.

IX. *Miniſters of State and Judges.*

AND although there is no one Prince, how ingenious ſoever in Buſineſs, that is able in his own perſon to manage all the Affairs of a Nation of any conſiderable extent, but he muſt have *Miniſters to participate with him in his Cares and Counſels*; Yet as theſe Miniſters borrow their Authority, in every thing they do, from Him; So the praiſe or diſpraiſe of their Actions returns finally upon Him alſo. For which reaſon, and becauſe according to the quality of Miniſters, buſineſs is done either well or ill, there lies an Obligation upon a Prince to advance honeſt and fit Perſons to Offices of Truſt in the Government, and upon occaſion to examine into the proceedings of the ſame; and as he finds them deſerving, to reward or puniſh them accordingly, for an Example to others to underſtand, that there is no leſs fidelity and diligence to be uſed in managing the publick Buſineſs, than one would practiſe in any private Affair that relates to himſelf.

ſelf. So when wicked people are encouraged to put their Inclinations in practice upon the hopes of eſcaping very eaſily unpuniſh'd under *Judges that are ſubject to Corruption*; it is a Prince's Duty to animadvert ſeverely upon ſuch Judges, as Favourers of Vice, againſt the ſafety of the Subject and quiet of the Nation. And though the diſpatching of the *ordinary* affairs may be committed to the Miniſters care; yet a Prince is never to refuſe to lend his Ear with Patience, when his Subjects preſent him with their Complaints and Addreſſes.

X. *Of Taxes and Duties.*

For Taxes and the like Duties, to which Subjects are upon no other account oblig'd, than as they are neceſſary to ſupport the publick Charge in Peace and War; it deſerves to be the Care of Princes not to extort more, than either the Neceſſities or ſignal advantages of the Nation require; and ſo to alleviate and ſoften them in the ways and means of laying them upon the Subject, that every one may find their weight as little offenſive as it can poſſibly be; being charg'd upon particulars in a fair and Equitable proportion, without favouring of one to deceive or oppreſs another. And let not the Mo-

ney that is so rais'd be consum'd by Princes in Luxury and Vanities, or thrown away in Gifts and needless Ostentation; but laid out upon the occasions of the Nation: always foreseeing that their Expences be made to answer to their Revenue; and in case of any failure in the latter to do it, that they attempt a Remedy by means of Frugality and in retrenching unnecessary Expences.

XI. *Interest of the Subject to be advanc'd by Princes.*

IT is true, Princes have no Obligation upon them to find maintenance for their Subjects, otherwise than Charity directs them to a particular Care of those, for whom it is impossible to subsist of themselves by reason of some Calamity undeserved. Yet because the Money, that is necessary for the conservation of the Publick, must be raised out of the Subjects Estates, in whose Wealth and Happiness the strength of a Nation does consist; it therefore concerns Princes to use their best Endeavours, *that the fortunes of their Subjects improve and flourish:* as particularly by giving Orders, how the fruits of the Earth and Water may be received in the most plentiful measure; and that men employ their Industry on things of Domestick growth, not purchasing at their Ex-

Expence that Labour from others, which themselves are able conveniently to undergo. *That* all Mechanick Arts and Merchandise, and in Maritime places, Navigation be encourag'd, as of great consequence to the Common-wealth. That Idleness be banish'd from amongst them, and Frugality be restored by *Sumptuary Laws*, contrived on purpose to avoid superfluous Expences; especially those, which occasion the transporting of Riches out of the Kingdom. Whereof if the Prince is pleas'd to set an Example in his own Person, it is likely to prove of greater force than all the *Laws* besides.

XII. *Factions and Parties.*

FINDING also that the internal Health and Strength of a Nation proceeds in a particular manner from the *Unity that is between the People*; and according as this happens to be more and more perfect, the power of the Government diffuses it self through the whole Body with so much the greater Efficacy, it is yet a further care incumbent upon Princes, to hinder both the growth of *publick Factions* as well as of *private Associations* of particular persons by Agreements amongst themselves. As also to see, that neither all nor any of the Subjects, under any pretence whatsoever

Religious or Civil, do retain a dependence upon a Stranger, within or without the Kingdom, more than upon their lawful Prince: in whom alone, before all others, all their Expectations ought to be reposed.

XIII. *Of War and Peace with forein Nations.*

Lastly, SINCE the Peace of Nations in reference to one another depends upon no very great Certainties; it ought to be the endeavour of Princes to encourage *Valour and Military Studies* in their Subjects; having all things, as Fortifications, Arms, Men, and Money (which is the Sinews of Business) ready prepared in case of an *Assult* to *repel* it: though not voluntarily to *begin one* upon another Nation, even after sufficient Cause of War given, unless invited by a very safe opportunity and the Publicks being in a good Condition conveniently to go through with the undertaking. For the same Reason it is proper to observe and search into the *Counsels* and Proceedings of Neighbours with all exactness; and to enter with them into *Leagues and Alliances* as prudently, as so great a Concern requires.

CHAP.

Chap. XII.

Of the Special Laws of a Community relating to the Civil Government.

IT now remains, that we take a View of the particular parts of Supreme Government, together with such Circumstances thereunto belonging as we find are worthy to be obſerv'd. In the firſt place there are the *Civil Laws*, meaning the Acts and Conſtitutions of the higheſt *Civil* Authority for the time being, ordained to direct the Subject in the courſe of his Life as to what things he ought to do, and what to omit. I. *What they are.*

THEY are called *Civil*, upon two accounts eſpecially: that is, either in regard of their *Authority* or their *Original*. In the firſt ſenſe, all manner of Laws whatſoever, of force whereby to try and decide Cauſes in a Court of Civil Judicature, let their Original be what it will, may paſs under that denomination. In the other we call only thoſe Laws *Civil*, which derive their Original from the Will of the II. *Why ſo call'd.*

Supreme Civil Government, treating upon the Subject of such things, as neither the Laws of God or Nature have determined; yet are found to conduce much to the profit of Particular Commonwealths.

III. *The Law of Nature, to be reinforced by them.*

As nothing therefore ought to be made the Subject of a Civil Law, but what relates to the good of the Common-wealth that does ordain it; so it seeming in the highest degree expedient towards the beauty and ease of living in a Community, that in particular *the Law of Nature should be diligently observ'd by all people*; it lies upon Supreme Governours to authenticate the said Law with the Force and efficacy of a Civil Law. For since indeed the wickedness of a great part of Mankind is arrived to a degree, which neither the apparent Excellency of the Law of Nature nor the fear of God himself is sufficient to restrain; the most effectual Method remaining, to preserve the happiness of living in a Community, is, by the authority of the Government to inforce the *Natural* by the *Civil Laws*, and supply the Disability of the one with the Power of the other.

Now

Now the *Force and Power, which it in Civil Laws,* conſiſts in this; that to the Aſſertory part of the Statute, concerning Things to be done or omitted, there is annex'd a *Penal Sanction,* rehearſing the Puniſhment that is appointed to attend a man in a Court of Juſtice for omitting what he ought to do, or doing what he ought to omit. Of which kind of Sanctions the Laws of Nature being of themſelves deſtitute, the breaking of them does not fall under the puniſhment of any Court in this World; but yet is reſerv'd for the Judgment of the Tribunal of God. IV. *The Penal Sanction.*

More particularly it is inconſiſtent with the nature of living in a Community, for every one, what he accounts to be his due, to exact it of his own proper Violence. So that here the Civil Laws come in to the aſſiſtance of the Natural. For they allow the Creditor the benefit of an *Action,* whereby the Debt that is owing to him by Virtue of a Law of Nature, with the help of the Magiſtrate, may be demanded and recovered in a Court of Juſtice, according to the Courſe of the Laws of the Kingdom: whereas without ſuch enforcement of the ſaid Laws, you can extort nothing from a Debtor againſt V. *Of Actions.*

his Will; but muſt entirely depend upon his Conſcience and Honour. The Civil Laws admit of *Actions* chiefly in the Caſe of thoſe Obligations, that are contracted betwixt Parties by an expreſs Bond or Covenant. For as to other Affairs, where the Obligation ariſes from ſome indefinite Duty of the Law of Nature, the Civil Laws make them not ſubject to an Action at all; on purpoſe to give occaſion to good men to exerciſe their Virtue, to their more extraordinary Praiſe, when it is evident they do that which is juſt and honeſt without Compulſion. Beſide that frequently the point in queſtion may not be of Conſequence enough to trouble a Court about it.

VI. *The proſecution of them.*

AND whereas the Law of Nature commands many things at large, in an indefinite manner, and leaves the application of them to every one in his own breaſt; the Civil Laws, being careful of the Honour and Tranquillity of the Community, preſcribe a *certain time, manner, place, perſons, and other circumſtances,* for the due proſecution of thoſe Actions, with the propoſal of a Reward upon occaſion to encourage people to enter upon them. And when any thing is obſcure in the Law of Na-

Nature, the Civil Laws *explain* it. Which Explication the Subjects are obliged to receive, and follow, although their own private Opinions do otherwiſe lead them to a contrary ſenſe.

VII. *Form.*

So that there being thus a number of Actions left by the Law of Nature to be conſidered according to the will and judgment of each perſon, which nevertheleſs in a Common-wealth ought to be regularly ſtated for the greater Decency and Quiet of the ſame; it uſes to be the care of the Civil Laws to reduce all thoſe Actions, with their reſpective Concerns, to *a proper Form*; as we ſee it is in Wills, Contracts, and divers other Caſes: from whence it comes, that they limit us (as they do) in the exerciſe of ſeveral Rights, to the uſe whereof the Law of Nature left us much at liberty.

VIII. *The Obedience due to the Civil Laws.*

For ſo far as the Civil Laws do not openly contradict the Law of God, the Subject ſtands *oblig'd to obey them*, not merely out of fear of Puniſhment, but by an internal Obligation confirm'd by the Precepts of the Law of Nature it ſelf. This being one of them, amongſt others, that *Subjects ought to obey their lawful Sovereigns.*

Nay,

IX. *And to the particular Commands of the Sovereign.*

NAY, it is their Duty to obey even the *personal Commands* of their Sovereigns, no less than they do the Common Laws of the Kingdom. Only here they must observe, whether the thing commanded is to be done by them *as in their own Names*, in the quality of an Action belonging *properly to Subjects to do*; or whether it be barely to undertake the *Execution* of an Affair for the Sovereign, in consequence of that Authority which he has to command it. In the latter Case, the Necessity that is imposed upon the Subject excuses him from Sin, though the Fact it self is a Sin in the Sovereign to command. But in the other, for a Subject as in his own name to do a thing which is repugnant to the Laws of God and Nature, it can never be lawful. And this is the reason, why if a Subject takes up Arms in an unjust War at the Command of his Sovereign, he sins not: Yet if he condemns the Innocent, or accuses and witnesses against them falsely upon the like Command, he sins. For as he serves in War, he serves in the name of the Publick: but acting as a Judge, Witness, or Accuser, he does it in his Own.

CHAP.

Chap. XIII.

Of the Power of Life and Death.

THE Civil Government, that is Supreme in every State, has a Right over the Lives of its Subjects, either *indirectly*, when it exposes their Lives in defence of the Publick; or *directly*, in the punishment of Crimes. I. *Twofold.*

For when the force of Foreiners in an Invasion (which often happens) is to be repell'd by Force; Or, that we cannot without the use of Violence obtain our Rights of them; it is lawful for the Government, by its Supreme Authority, to compel the Subjects to enter into its Service: not thereby purposely intending their Death, only their Lives are exposed unto some Danger of it. On which occasions that they may be able to behave themselves with Skill and Bravery, it is fit they should be exercised and prepared for the purpose. Now the Fear of Danger ought not to prevail with any Subject to render himself uncapable of undergoing the duties of a Soldier. Much less ought it II. *Indirectly.*

it to tempt a man that is actually in Arms to desert the Station appointed him: who ought to fight it out to the last drop of his blood, unless he knows it to be the will of his Commander that he should rather preserve his Life than his Post, or if he be certain that the maintaining of such Post is not of so great importance, as the preservation of the Lives engaged therein.

III. *Directly.* THE Government claims a Power to take away the Lives of Subjects *directly*, upon the occasion of any heinous Crimes committed by them; whereon it passes judgment of Death by way of *Punishment*. As likewise the Goods and Chattels of Criminals are subject to the Censure of the Law. So that here some General things concerning the nature of Punishments come to be discoursed.

IV. *Of Punishments.* PUNISHMENT is an Evil that is *suffered*, in Retaliation for another that is *done*. Or, a certain grievous pain or pressure, imposed upon a person by Authority, in the manner of a Force, with regard to an Offence that has been committed by him. For although the *doing* of some things may oftentimes be commanded in the place of a Punishment, yet it is upon this considera-

ſideration, that the things to be done are troubleſome and laborious to the doer, who will therefore find his ſufferings in the performance of ſuch Action. A *Puniſhment* alſo ſignifies its being inflicted againſt the wills of people: For it would not otherwiſe obtain its end; which is, to deter them from Crimes by the ſenſe of its Severity: An effect it never will produce, if it were only ſuch, as an Offender is willing and pleaſed to undergo. As for other Sufferings, which happen to be undergone in Wars and Engagements; or which one bears innocently, through the means of an Injury done him: the former not being inflicted by Authority, and the other not referring to an antecedent Crime, they do neither of them import the proper ſenſe and meaning of a *Puniſhment*.

V. *Inflicted by the Government.*

BY our Natural Liberty we enjoy the Priviledge to have no other Superiour but God over us, and only to be obnoxious to punishments Divine. But ſince the introduction of Government, it is allowed to be a branch of the Office of thoſe in whoſe hands the Government is intruſted, for the good of all Communities; that upon the repreſentation of the unlawful practices of Subjects before them, they

they shall have power effectually to coerce the same, that people may live together in Safety.

VI. *The Benefit of them.*

NEITHER does there seem to be any thing of Inequality in this, that *he who Evil does should Evil suffer.* Yet in the course of Humane Punishments, we are not solely to regard the quality of the Crime, but likewise to have an Eye upon *the benefit of the Punishment.* By no means executing it on purpose to feed the fancy of the party injured, or to give him pleasure in the pains and sufferings of his Adversary: Because such kind of Pleasure is absolutely inhumane, as well as contrary to the disposition of a good fellow-Subject.

VII. *The End of them.*

THE *Genuine end of Punishments in a State,* is, the Prevention of wrongs and injuries: which then has its effect, when he who does the Injury is amended, or for the future incapacitated to do more, or others taking Example from his sufferings are deter'd from like Practices. Or, to express it an other way; That which is to be considered in the business of Punishments, is the *Good,* either of the Offender, or the Party offended, or generally of All

First,

First, We consider the *Good of the Offender*: in whose mind the smart of the Punishment serves to work an alteration towards Amendment, and extinguishes the lust of doing the same again. Divers Communities leave such kind of Punishments as are qualified with this End to be exercised by Masters over the members of their own Families. But it never was thought good they should proceed so far as to Death, because he that is dead is past Amendment. VIII. *Upon the Offender.*

In the next Place, a Punishment intends the *good of the party Offended*: securing him, that he suffer not the like mischief for the future, either from the same or other persons. It secures him from the same; if the mans Life, or, pardoning that, his Power to do hurt be taken from him; or perhaps sad Experience unteaches him the Art he has learnt to Offend. It secures him from others, by being perform'd in the most open and publick manner, accompanied with the circumstances of form and pomp that are apt to strike a dread into as many as behold it. IX. *Upon the Party offended.*

In a word, the *good of all people* is intended by the Execution of Punishments. For by this means care is taken, that he who X. *Upon All.*

who has done a miſchief to one, ſhall do no ſuch miſchief again to another: the terror of whoſe Example may alſo be an Antidote for the reſt againſt the temptations to his Crime: And this Good accrews after the ſame manner as the former.

XI. *Internal Acts of the mind, not ſubject to them.*

But if together with the End of Puniſhments we conſider the condition of Humane Nature, we ſhall ſee that *all ſins are not of that quality, that they muſt neceſſarily fall under the Sentence of a Court of Juſtice.* The *Acts of the mind within it ſelf*, which are merely internal; as thinking upon a Sin with delight, coveting, deſiring, reſolving to do an ill thing, but without effect; though they ſhould be afterwards made known by mans own Confeſſion, yet are all exempted from the ſtroke of humane Puniſhments. For ſo long as thoſe internal Motions have not occaſion'd the prejudice of any, whom does it concern or profit to cauſe the Author to ſuffer for the ſame?

XII. *Nor minute Lapſes,*

It would alſo be over-ſevere in Laws, to puniſh the moſt minute Lapſes in the actions of men: when in the condition of our Natures the greateſt attention cannot prevent them.

THERE are many instances of Actions more, of which the publick Laws dissemble the taking of any Notice, *for the peace of the Nation.* As sometimes, because a good Act shines with greater glory, by being wrought without sight of a Constraint: or perhaps, it is not altogether worth the troubling of Judges and Courts about it: Or, it is a matter extraordinarily difficult to be decided: or, some old inveterate Evil, which cannot be removed without causing a Convulsion in the State. XIII. *And other Actions.*

ADD hereunto the *Vices of the mind, flowing from the common corruption that reigns in the World:* as Ambition, Avarice, Rudeness, Ingratitude, Hypocrisie, Envy, Pride, Anger, private Grudges, and the like. All these of necessity must be exempted from the cognisance of humane Judicatures, so long as they break not out into publick Enormities: seeing they abound to that degree, that if you should severely pursue them with Punishments, there would be no people left to be commanded. XIV. *Nor the Vices of the Mind.*

FURTHER, When there have been Crimes committed, which are punishable by the Civil Judicature, it is not always necessary to exert the execution of Justice XV. *Of Pardons.*

upon them. For in ſome caſes a *Pardon* may poſſibly be extended to Criminals, with a great deal of reaſon, (as it never ought to be granted without it;) and amongſt other Reaſons, theſe eſpecially may be ſome; That the Ends, which are intended by Puniſhments, ſeem not ſo neceſſary to be attended in the caſe in queſtion; where a Pardon may produce more good than the Puniſhment, and the ſaid Ends be more conveniently obtain'd another way. That the Priſoner can alledg thoſe excellent Merits of his own or of his Family towards the Common-wealth, which deſerve a ſingular Reward. That he is famous for ſome remarkable rare Art or other; or, it is hoped, will waſh away the ſtain of his Crime by performing of ſome Noble Exploit. That Ignorance did intervene in the Caſe, though not altogether ſuch as render him blameleſs: or, that a particular reaſon of the Law ceaſes in a fact like his. For theſe reaſons, and oftentimes for the number of the Offenders being very great, Pardons muſt be granted rather than the Community ſhall be exhauſted by Puniſhments.

To

XVI. *The greatneſs of a Crime.*

TO take an Eſtimate of the *greatneſs of any Crime*, there is to be conſidered, firſt the Object, againſt which it is committed; How Noble and Precious *that* is. Then the Effects; what Damage more or leſs it has done to the Common-wealth: and next the pravity of the Author's Intention, which is to be collected by ſeveral ſigns and circumſtances: As, whether he might not eaſily have reſiſted the Occaſions that did tempt him to it; and beſides the common reaſon, whether there was not a peculiar one for his forbearance? What circumſtances aggravate the Fact; or, is he not of a Soul diſpoſed to reſiſt the allurements of a Temptation? Enquiring yet further, whether he was not the Principal in the Commiſſion? or was he ſeduced by the Example of others? and once, or oftner, or after admonitions ſpent in vain upon him?

XVII. *Meaſure and kind of puniſhment.*

BUT for the preciſe *Kind and Meaſure of Puniſhment* that is fit to be pronounc'd upon each Crime, it belongs to the Authority of the Government to determine it, with an intire regard to the profit of the Common-wealth. Whence the ſame Puniſhment may and oftentimes is impoſed upon two *Unequal* Crimes; underſtanding

the Equality that is commanded to be regarded by Judges, to mean the particular case of those Criminals, who being guilty of the same kind of Fact, the one shall not be acquitted and the other condemned without very sufficient reason. And although men ought to shew to one another all the Mercy and Tenderness that may be, yet the good of the Nation and the security of its Subjects require upon occasion, when either a Fact appears most pernicious to the Publick, or there is need of a sharp Medicine to obviate the growing Vices of the Age, that the Government should *aggravate its Punishments:* which deserve at all times to be carried high enough, to be sufficient to controll the Propensity of men towards the Sins those Punishments are levell'd against. And let the Government observe, that no greater punishments be inflicted than the Law assigns, unless the Fact be aggravated by very heinous Circumstances.

XVIII. *The person of the Offender.*

MOREOVER since the same Punishment, not affecting all persons alike, meets with various returns to its endeavours to restrain in them the itch of evil-doing, according to the disposition of every one that encounters it; Therefore both in the Designa-

ſignation of Puniſhments in general and in the Application of them to particulars, it is proper *to conſider the perſon of the Offender*, in conjunction with as many qualities, as concur to augment or diminiſh the ſenſe of Puniſhment; as Age, Sex, Condition, Riches, Strength, and the like.

XIX. *Crimes done by Communities.*

AND as no man in a Court of Civil Judicature can properly be puniſh'd for another's Crime; ſo in the *Commiſſion of a Crime by a Community*, whoever does not conſent to it, ſhall not be condemn'd for it; nor ſuffer the loſs of any thing he does not hold in the name and ſervice of the Community; further then it is uſual on theſe occaſions for the Innocent to feel the ſmart of the *Common Misfortune*. When all thoſe are dead, who did conſent or aſſiſt towards the ſaid Crime; then the guilt thereof expires, and the Community returns to its priſtine Innocency.

XX. *Effect of one man's Crime upon another.*

YET it frequently happens, that the Crime of one *ſhall occaſion the inconvenience of many others*, even to the intercepting of a future bleſſing from them that they juſtly expected to receive. So when an Eſtate is confiſcated for a Crime done by the Parents, the innocent Chil-

dren fall into beggery. And when a Priſoner upon Bail makes his eſcape, the Bail is forced to anſwer the Condition of the Bond, not as a *Delinquent*, but becauſe it was his voluntary act to oblige himſelf to ſtand to ſuch an Event.

CHAP. XIV.

Of Reputation.

I. *Defin'd.* REPUTATION in General is that *Value* ſet upon Perſons in the World, by which they are Compared and Equalized, preferr'd or poſtponed to others.

II. *Divided.* IT is divided into *Simple*, and *Accumulative*. And may be conſidered as to both, either in a People living *at their natural liberty*, or United together under a Government.

III. *Simple reputation in a State of Nature.* SIMPLE *Reputation amongſt a People in their Natural Liberty* conſiſts chiefly in this; that by their Behaviour they have the Honour to be eſteemed and treated with as Good men, ready to comport themſelves in Society with others according

ing

ing to the preſcription of the Law of Nature,

IV. *How preſerved.* THE Praiſe whereof remains *Entire*, ſo long as no Evil and Enormous fact is knowingly and wilfully done by them, with a wicked purpoſe, to Violate the Laws of Nature towards their Neighbour. Hence every one naturally is to paſs for a Good Man, until the contrary is proved upon him.

V. *Diminiſhed, and repair'd.* THE ſame is *diminiſh'd* by tranſgreſſing againſt the Law of Nature malitiouſly, in any heinous matter: which ſerves alſo as a Caution for the future, to treat with him that does it with greater circumſpection: though this *ſtain may be waſh'd off* either by a voluntary Reparation of damages, or the teſtimonies of a ſerious Repentance.

VI. *Loſt, and recovered.* BUT by a Courſe of life directly tending to do miſchief, and the ſeeking of advantages to themſelves by open and promiſcuous injuries towards others, the Reputation deſcribed is *totally deſtroy'd*. And until men of this ſort repent, they may lawfully be uſed as Common Enemies, by every one, that is in any manner liable to come within the reach of their Outrages. Yet it is not impoſſible even for

these men, to *retrieve their Credit*; if after they have repair'd all damages and obtain'd their Pardons, they abjure their vitious, to embrace for the time to come, an honest course of living.

VII. *Under Government.* SIMPLE Reputation *amongst those who live together in a Community*, is that, by which a man is understood to be of *some Account*; and has never been declared a vitious member, by the Laws and Customs of the Place.

VIII. *Lost by an ill condition of life.* HERE therefore the same *parishes*, either by reason *of the course of a man's life*, or in *Consequence of some Crime*. The first is the case of *Slaves*; whose Condition, tho naturally having no Turpitude in it, in many Communities places them, if possible, below Nothing. As likewise that of *Panders*, *Whores*, and such like, whose lives are accompanied with Vice, at least the scandal of it. For tho, whilst the Community thinks fit publickly to tolerate, they participate of the benefit of the Common Protection; yet they ought however to be excluded the Society of Civil Persons. And we may conclude no less of others, who are employ'd in works of Nastiness and Contempt, though naturally not including any Vitiousness in them.

By

IX. *And his Crimes.*

BY *Crimes* men utterly *loſe* their Reputation, when the Laws ſet a brand of Infamy upon them for the ſame; either by Death, and ſo their Memory is diſgraced for ever; or by Baniſhment out of the Community, or by Confinement in the quality of ſcandalous and corrupt Members.

X. *Otherwiſe Indelible.*

OTHERWISE it is very clear, that the *Natural Honour of no man can be taken from him ſolely by the will of the Government:* For how can it be underſtood, that the Government ſhould have a power collated on it, which conduces in no degree to the Benefit of the Common-wealth? So neither does it ſeem as if a real Infamy can be contracted by executing the Commands of the Government, barely in the quality of a Miniſter.

XI. *Accumulative Reputation.*

ACCUMULATIVE *Reputation* we call *that*, by which Perſons, reciprocally equal as to their Natural Dignity, come to be preferr'd to one another according to thoſe Accompliſhments, which uſe to move the minds of People to pay them Honour. For *Honour* is properly the ſignification of our judgment concerning the Excellency of another perſon.

THIS

XII. *Twofold.* THIS ſort of Reputation may be conſidered, either as amongſt thoſe who continue in the *liberty of a State of Nature*, or amongſt the *members of the ſame Common-wealth*. We will examine, what the *foundations* of it are, and how they produce in people, both a *Capacity* to expect the being Honoured by others; and an *actual Right, ſtrictly ſo call'd*, to demand it of them as their due.

XIII. *The grounds of it.* THE *foundations of an Accumulative Reputation* are in general reckoned to be all manner of Endowments, either really containing or ſuch as are ſuppoſed to contain ſome great Excellency and Perfection, which has plainly a tendency in its effects to anſwer the ends of the Laws of Nature or Societies. Such are Acuteneſs and readineſs of Wit, a Capacity to underſtand ſeveral Arts and Sciences, a ſound Judgment in buſineſs, a ſteddy Spirit, immoveable by outward Occurrences and equally ſuperiour to Flatteries and Terrors, Eloquence, Beauty, Riches, but more eſpecially the performing of brave Actions.

XIV. *The diſtinction of a Capacity and a Right to it.* ALL theſe things together produce a *Capacity* to receive Honour, *not a Right*. So that if any perſon ſhould decline

cline the payment of his Veneration to them, he may deſerve to be taken notice of for his Incivility, but not for an Injury. For a *perfect Right* to be honoured by others, and bear the Enſigns thereof, proceeds either from an Authority over them; or, from ſome mutual agreement; or from a Law that is made and approved by one Common Lord and Maſter.

XV. *Amongſt Princes and States.*

AMONGST *Princes* and *Independent States*, they uſually alledg for *Honour and Precedence*, the Antiquity of their Kingdoms and Families; the extent and richneſs of their Territories, their Power abroad and at home, and the ſplendour of their Styles. Yet neither will all theſe pretences beget a *perfect right* in any Prince or State to have the Precedence of others, unleſs the ſame has been firſt obtain'd by Conceſſion or Treaty.

XVI. *Amongſt Subjects.*

AMONGST *Subjects* the *Degree of Honour is determin'd by the Prince*, who wiſely therein regards the Excellency of each Perſon and his Ability to advance the Publick Good. And whatever Honour a Subject receives in this Nature, as he may juſtly claim it againſt his fellow-Subject, ſo he ought no leſs to ſatisfie himſelf in the quiet enjoyment of it.

CHAP.

Chap. XV.

Of the Power of Governours over the Goods of their Subjects.

I. *Threefold.* As it wholly lies at the pleasure of Supreme Governours, to appoint with what Restrictions they will allow their Subjects to have Power over the Goods, which themselves derive upon them; So also over the Goods of the Subject's *own acquiring* by their proper industry or otherwise, the said Governours claim a *threefold kind of Right*, resulting from the Nature and as being necessary to the End of Communities.

II. *By Laws.* Their first, consists in this; that it belongs to them to *prescribe Laws* to the Subjects, about the measure and quality of their Possessions; and which way to transfer the same from hand to hand, with other particulars of the like nature; and how to apply them in the Use to the best advantage of the whole Body.

III. *By Taxes and Customs.* By the second, they claim to appropriate to themselves, out of the Goods of the Subjects, a *Portion* by the name of *Tribute* and *Customs*. And it is but reasonable,

ſonable, that ſince the Lives and Fortunes of all the Members are defended by the Community, the neceſſary Charges thereof ſhould be defray'd by a general Contribution. For he muſt be very impudent indeed, who will enjoy the Protection and Priviledges of a Place, and yet contribute nothing in Goods or Service towards its Preſervation. Only herein there will be great occaſion for Governors to accommodate themſelves with Prudence to the querulous temper of common people: and let them endeavour to levy the Mony the moſt inſenſibly that they can: Obſerving firſt an Equality towards all, and then to lay the Taxes rather upon the ſmaller Commodities, of various kinds, than upon the chief in a more uniform way.

IV. *By Seizure for publick uſe extraordinary.*

THE third is a *Right of Extraordinary Dominion*, conſiſting in this; that upon an *urgent Neceſſity of State*, the Goods of any Subject, of which the preſent occaſion has need, may be taken and applied *to publick uſes*, though far exceeding the proportion, that the party is bound to contribute towards the expences of the Common-wealth. For which reaſon, as much (if it be poſſible) ought to be refunded to him again, either out of the publick

publick Stock or by the Contribution of the reſt of the Subjects.

V. *Publick Revenues unalienable.*

BESIDES theſe three pretenſions over the *private*, in divers Communities there are ſome, particularly call'd, the *Publick Eſtate*; which carry alſo the name of the *Kingdoms, or the Princes Patrimony*, according as they are diſtributed into the *Treaſury* or the *Privy-Purſe*. The latter ſerves for the maintenance of the Prince and his Family; who has a propriety in it during life, and may diſpoſe of the Profits thence ariſing at his pleaſure. But the Uſe of the other is appropriated for the publick occaſions of the Kingdom: the Prince officiating therein as Adminiſtrator only, and ſtanding obliged to apply all to the purpoſes that are deſign'd by them. And neither of the two *Patrimonies* can be *alienated* by the Prince without the Peoples Conſent.

VI. *Neither Royal Power nor Allegiance alienable.*

MUCH leſs can a *whole Kingdom* (that is not held *patrimonially*) or any *part* of it, be *alienated without their conſent to it*: and in the latter caſe particularly the *conſent of that part that is to be alienated.* As on the other hand no Subject againſt the will of his Community, can poſſibly *diſingage himſelf from the bonds of his Duty and*

and Allegiance to it; unleſs the force of forein Enemies reduces him to ſuch a Condition, that he has no other way to be ſafe.

Chap. XVI.

Of War and Peace.

ALTHOUGH nothing is more agreeable to the Laws of Nature, than the mutual Peace of men with one another, preſerved by the Voluntary Application of each perſon to his duty; living together in a State of Peace being a peculiar diſtinction of men from Brutes; Yet it is ſometimes both *lawful and neceſſary to go to War*, when by means of another's Injuſtice we cannot without the uſe of Force preſerve what is our own, nor enjoy thoſe Rights which are properly ours. But here common Prudence and Humanity do admoniſh us to forbear our Arms there, where the proſecution of the injuries we reſent, is likely to return more hurt upon us and ours, than it can do good. I. *Neceſſity of War ſometimes.*

II. *Just Causes of War.* THE *just Causes upon which a War may be undertaken,* come all to these. The Preservation of our selves, and what we have, against an unjust Invasion: and this sort of War is call'd *Defensive.* The Maintenance and Recovery of our Rights from those that refuse to pay them; The reparation of Injuries done to us, and Caution against them for the future. And this sort of War is call'd *Offensive.*

III. *Amicable Composition.* NOT that upon a Prince's taking himself to be injured, he is presently to fly to Arms, especially if any thing about the Right or Fact in Controversie remains yet under dispute; But first let him try to compose the matter in *an amicable way,* by Treaties, by appeal to Arbitrators, or by submitting the matter in question to the decision of a Lot, and those Methods are the rather to be chosen by that Party who *claims* from another, because Possession with any shew of Right is wont to meet with the most favourable Constructions.

IV. *Unjust Causes of War.* THE *unjust Causes of War* are either those, which *openly to all the World are such*; as Ambition and Covetousness, and what may be reduced thereto: or those, that admit of a faint and imperfect *Colour*

lour to be pretended in their excuſe. Of this kind there is Variety. As the fear of a Neighbors growing Wealth and Power, Conveniency of a Poſſeſſion to which yet no Right can be made out, Deſire of a better Habitation, the denial of common Favours, the folly of the Poſſeſſor, the deſire of extinguiſhing anothers Title lawfully acquired, becauſe it may be prejudicial to us, *&c.*

V. *Of Deceits in War.*

AND though the moſt proper way of acting in War is by that of Force and Terrour; Yet it is altogether as lawful to attack an Enemy by *Stratagems and Wiles*, provided that the Faith and Truſt which you give him is inviolably obſerved. It is lawful to deceive him by Stories and feign'd Narrations, not by Promiſes and Covenants.

VI. *Violence.*

BUT concerning the *Violence*, which may be uſed againſt him and what belongs to him; we muſt diſtinguiſh betwixt what it is poſſible for him to *ſuffer without injuſtice*, and what we may eaſily *inflict without the breach of Humanity*. Whoever declares himſelf my Enemy, as he makes profeſſion by that very act of enterprizing upon me the greateſt Miſchiefs in the World; So at the ſame time he fully indulges me the leave to employ the

utmoſt of my Power, without Mercy, againſt himſelf. Yet Humanity commands me, as far as the fury of War will permit, that I do my Enemy no more harm, than the defence or vindication of my right requires, with care to my ſecurity for the time to come.

VII. *Solemn and unſolemn Wars.* We commonly divide War into *Solemn* and *Unſolemn*. To a *Solemn* War it is required, that it be made on both ſides by the Authority of the Sovereign Governours; and preceded by a publick Declaration. The *other* either is not publickly denounc'd, or perhaps is begun amongſt private perſons. To which latter Head belongs alſo *Civil Wars*.

VIII. *Power of making War.* As the *Power of making War* in all Nations lies in the ſame hands, that are intruſted with the Government; So it is a matter above the Authority of a *Subordinate Magiſtrate* to engage in, without a delegation from thence, though he could ſuppoſe with reaſon, that were they conſulted upon the matter they would be pleaſed with it. Indeed all Military Governors of fortified places and Provinces, having Forces under them to command upon the defence thereof, may underſtand it to be enjoin'd them by the very Deſign of their Employ-

ployments, to repel an Invader from the parts committed to their truſt by all the ways they can. But they are not raſhly to carry the War into an Enemies Countrey.

IX. *Wars occaſion'd by protecting of Refugees.*

IN a State of Natural Liberty, a Perſon is aſſaulted by Force only for the injuries that are done by himſelf. But in a Community, a War often happens upon the *Governor* or *the whole Body*, when *neither of them* has committed any thing. To make this appear juſt, it is neceſſary, the act of a third Party muſt by ſome way or other paſs upon them. Now Governors do partake of the Offences not onely of their proper Subjects, but of others that occaſionally fly to them; if either the Offences are done by their *Permiſſion*, or that they *receive and protect* the Offender. The ſufferance of an Offence becomes then blameable, when at the ſame time that one knows of the doing it, he has a power to hinder it. Things openly and frequently done by the Subjects, are ſuppoſed to be known to their Governors: in whom it is always preſum'd there is a Power alſo to prohibit, unleſs a manifeſt proof appears of its defect. Yet to make it an occaſion of War to give Admittance and Protection to a Criminal, who flies to us for the

ſake only of eſcaping his Puniſhment, is what muſt proceed rather by virtue of a particular Agreement betwixt Allies and Neighbours, than from any common Obligation: unleſs the Fugitive, being in our Dominions, contrives Hoſtilities againſt the Common-wealth he deſerts.

X. *Repriſals.* ANOTHER received Cuſtom betwixt Nations, is; when a Debt is owing from one to another, which ſometimes comes to be occaſion'd by not adminiſtring of Juſtice rightly, to arreſt the effects of the private Subjects of the Nation indebted, and aſſign them to the uſe and ſatisfaction of thoſe of their own, to whom particularly the Debt is owing: leaving ſuch as by this means have the misfortune to loſe their Goods, to ſeek for Reſtitution of the Party, that is really guilty of the Debt. And theſe Executions uſe to be call'd *Repriſals*, which commonly prove to be the forerunners of War.

XI. *Of Wars in the defence of others.* A War may be made by a perſon, not only *for himſelf*, *but for another*. In order to do this with Honeſty, it is requiſite, that He for whom the War is undertaken ſhall have a juſt Cauſe; and his Friend, a probable Reaſon, why he will become an Enemy to *that other* for his ſake.

Amongſt

Amongſt thoſe, in whoſe behalf it is not only lawful but our Duty to make War, there is in the firſt place *our Natural Subjects*, as well ſeverally, as the univerſal Body of them; provided, that the War will not evidently involve the State in greater miſchiefs ſtill. Next there is the *Allies*, with whom we have engaged to aſſociate our Arms by Treaty: Yet therein not only giving the Precedence to our own Subjects, if they ſhould chance to ſtand in need of aſſiſtance at the ſame juncture; but preſuppoſing alſo, that the Allies have a juſt Cauſe and begin the War with Prudence. After our Allies, our *Friends* deſerve to be aſſiſted by us, even without our Obligation to do it by a ſpecial Promiſe. And where there is no other reaſon, the common Relation alone of men to men may be ſufficient, when the party imploring our aid is unjuſtly oppreſs'd, to engage our endeavours, as far as with convenience we are able, to promote his Defence.

XII. *The liberty of killing, &c. in War.*

THE *liberty, that is in War*, of killing, plundering and laying all things waſt, extends it ſelf to ſo very large a Compaſs, that though a man carries his Rage beyond the *uttermoſt bounds of Humanity*, yet in

the opinion of Nations he is not to be accounted infamous, or one that ought to be avoided by persons of Worth. Excepting that amongst the more Civilized World, they look upon some particular Methods, of doing hurt to Enemies, to *be base*; as poisoning or corrupting of Soldiers or Subjects to kill their Masters, &c.

XIII. *Of things taken in War.*

MOVEABLE *things* are understood to be *Taken* in War then, when they are carried out of the reach of the Enemy who before possess'd them. And *Things immoveable*, when we have them within our Custody so, that we can beat the Enemy away from thence. Yet the right of the former Possessor to retake the same, is never utterly extinguish'd, until he renounces all his pretensions to them by a subsequent Agreement. For without this, it will be always lawful, what by force is lost, by force to retrieve again. The Soldiers fight by the Authority of the Publick; and whatever they obtain from the Enemy, they get it not for themselves but properly for the Community they serve. Only it is customary in most places, to leave to them by Connivance the Moveables, especially those of small Value, that they take, in the place of a Reward or perhaps their Pay,

Pay, and for an Encouragement to them to be free of their Blood, beſides in the Caſes of Neceſſity. When *Things immoveable* that have been loſt *to*, are retaken *from* the Enemy, they return into the poſſeſſion of the former Owners: And Moveables ought to do the ſame; but that amongſt moſt people they are delivered over as a prey to the Army.

EMPIRE alſo or Government comes to be acquired by War, not only over the *particular perſons conquered*, but *entire States*. To render this lawful, and binding upon the Conſciences of the Subjects, it is Neceſſary; that on the one ſide the Subjects ſwear Fidelity to the Conqueror; and on the other that the Conqueror caſt off the State and Diſpoſition of an Enemy towards *them*. XIV. *Conqueſt.*

THE Proceedings of War are ſuſpended by *a Truce*; which is an Agreement, the State and Occaſion of the War remaining ſtill the ſame as before, to abſtain on both ſides from all acts of Hoſtility unto a time appointed. When that is paſt, if there be no Peace concluded in the *Interim*, they reſume their Hoſtilities again, without the formality of a new Declaration. XV. *Truce.*

XV. *Treaties of Truce.* NOW *Truces* are either *such* as they conſent to during the continuance of the Expedition, whilſt both ſides keep their Forces on foot; or *thoſe*, upon which they quite disband their Forces and lay aſide all Military Preparations. The firſt are ſeldom taken but for a ſmall time. The others they *may* and uſually *do* take for a Continuance ſo great, as to carry the face of a Peace and ſometimes alſo the very Name, with the addition of a term of Years, only to diſtinguiſh it from a perfect Peace indeed, which regularly is Eternal and extinguiſhes the Cauſes of the War for ever. Thoſe that they call *tacit Truces*, oblige to nothing. For as on both ſides they lie quiet for their pleaſure, ſo whenever they think fit they may break out into acts of Hoſtility.

XVI. *Treaties of Peace.* BUT when a Peace is mutually ratified by each Sovereign Governor, upon Articles and Conditions agreed betwixt themſelves, which they engage to obſerve and put in Execution faithfully by a time preſcribed; Then a War is perfectly ended. In confirmation whereof, it is uſual, not only for both Parties to take their Oaths and interchange Hoſtages; but for ſome others oftentimes, eſpecially amongſt the Aſſiſt-

Aſſiſtants at the Treaty, to undertake the *Guaranty*, of the ſame, with promiſes of Aid to him, whoever is firſt injured by the other, in oppoſition to the Articles of the Peace that is made.

Chap. XVII.

Of Alliances.

I. *Alliances twofold.*

ALLIANCES interchangeably paſſed betwixt Sovereign Governours, are of good uſe both in times of War and Peace. They may be *divided*, in reſpect of their Subject, either into ſuch as *reinforce the Duty* already incumbent on us from the Law of Nature; or ſuch as *ſuperadd ſome thing* to the Precepts of that Law; at leaſt they determin their Obligation to ſuch or ſuch particular Actions, which before ſeem'd indefinite.

II. *Treaties of Peace.*

BY the *firſt* ſort are meant *Treaties of Peace*, wherein nothing more is agreed upon than the ſimple exerciſe of Humanity towards one another, or a forbearance of Miſchief and Violence. Or perhaps they may eſtabliſh a general ſort of Friendſhip betwixt

betwixt them, not mentioning particulars; or fix the Rules of Hoſpitality and Commerce, according to the directions of the *Law of Nature.*

III. *Equal Leagues.* THE others of the latter ſort, are call'd *Leagues*, and are either *Equal* or *Unequal*. *Equal Leagues* are ſo far compoſed of the ſame Conditions on both ſides, that they not only promiſe what is *Equal* abſolutely or at leaſt in proportion to the abilities of man; but they ſtipulate in ſuch a manner too, that neither party is to the other obnoxious or in a worſe condition.

IV. *Unequal.* UNEQUAL *Leagues* are thoſe, wherein Conditions are agreed upon that are unequal, and render one ſide worſe than the other. This Inequality may be either on the part of the *Superior*, or elſe of the *Inferior Confederate.* For if the Superior Confederate engages to ſend the other Succours, unconditionally, not accepting of any terms from him; or engages to ſend a greater proportion of them than He, the Inequality lies upon the *Superior.* But if the League requires of the inferior Confederate the performance of more things towards the Superior, than the Superior performs towards him, the inequality there no leſs evidently lies on the ſide of the *Inferior.* AMONGST

AMONGST the Conditions required of an Inferior Ally, ſome contain a *diminution of his Sovereign Power*, reſtraining him from the Exerciſe thereof in certain Caſes without the Superior's conſent. Others *impoſe no ſuch prejudice upon his Sovereignty*, but oblige him to the performance of thoſe we call *tranſitory* Duties, which once done are ended altogether. As to diſcharge the pay of the others Army, to reſtore the expences of the War, to give a certain ſum of Mony, to demoliſh his Fortifications, deliver Hoſtages, ſurrender his Ships, Arms, &c. And yet neither do ſome *perpetual* Duties *diminiſh the Sovereignty* of a Prince. As to have the ſame Friends and Enemies with another, though the other be not reciprocally engag'd to have the ſame with him: To be obliged to erect no Fortifications here, nor to ſail there, &c. To be obliged to pay a certain friendly reverence to the other's Majeſty, and to conform with Modeſty to his pleaſure. V. *Conditions put upon Inferiors.*

BOTH theſe ſorts of Leagues, as well *Equal* as the *Unequal*, are wont to be contracted upon various Reaſons: whereof ſuch eſpecially produce effects of the ſtrongeſt and moſt binding Complexion, as tend VI. *The Subject of Leagues.*

to

to the conjunction of many Nations in a League that is to last for ever. But the *Common Subject* of the Leagues most in use, is either the preservation of Commerce, or the furnishing of Succours in a War, Offensive or Defensive.

VII. *Real and personal Leagues.* THERE is another famous Division of Leagues into *Real and Personal.* The *Latter* express such a near regard to the Person of the Prince they are contracted with, that whenever he dies, they expire also. *Real Leagues* are those, which not being entred into in consideration so much of any particular Prince or Governour, as of the Kingdom or Common-wealth, continue in full force, even after the death of the first Contracters of them.

VIII. *Sponsions.* THE next in Nature to *Leagues,* are the Agreements of a *Publick Minister,* made upon the Subject of the Affairs of the Prince his Master, without Orders for the same: which are usually call'd *Overtures.* The Conditions whereof impose no Obligation upon the Prince, until he pleases afterwards to ratifie them by his own Authority. And therefore, if after the *Minister* has agreed upon the Compact absolutely, he cannot obtain his Prince's confirmation of it; it lies upon himself to

to consider, what satisfaction he ought to render unto those, who depending upon his Credit have been deceiv'd by him with insignificant Engagements.

Chap. XVIII.

The Duty of Subjects.

I. *Twofold.* THE Duty of Subjects is either *General*, arising from the Common Obligation which they owe to the Government as *Subjects:* or *Special*, upon the account of some particular *Office* and *Employment*, that the Government imposes upon them.

II. *General.* THEIR *General* Duty respects the demeaning of themselves severally, towards their Governors, the Common-wealth, and one another in particular.

III. *Towards their Governours.* TO their Governors they owe Honor, Fidelity and Obedience. Beside that they ought to entertain good and honourable thoughts of them and their Actions, and speak accordingly; to acquiesce with Patience and Content under the present State of things, not suffering their desires to wander

wander after Innovations; nor adhering to any Perſons, or admiring and honouring them, *more* than they do the Magiſtrates that are ſet over them.

IV. *The Commonwealth.* IN reference to the *Common Wealth*, their Duty is, to prefer the Happineſs and Safety of it to the deareſt things they have in the World: to offer their Lives, Eſtates and Fortunes with chearfulneſs towards its preſervation; and ſtudy to promote its Glory and Welfare by all the powers of their Induſtry and Wit.

V. *One another.* TOWARDS *one another*, their behaviour ought to be friendly and peaceable, as ſerviceable and as affable as they can make it: not to give occaſion of trouble by Moroſeneſs and Obſtinacy, nor envying the happineſs of any, or interrupting their Enjoyments.

VI. *Their ſpecial Duties.* AND as for their *particular Duties*, as *Officers*, whether they influence the whole body of the Nation, or are employed only about a certain part of it, there is this one general Precept to be obſerv'd for all; *That* no perſon affect or take upon him any Employment, of which he knows himſelf by the ſenſe of his diſabilities to be unworthy and uncapable.

PAR-

PARTICULARLY, let thoſe who *aſſiſt at the Publick Counſels*, turn their Eyes round into all parts of the Commonwealth; and whatever things they diſcover to be of uſe, thereupon ingenuouſly and faithfully without partiality or corrupt intentions lay open their obſervations. Let them not take their own Wealth and Grandeur, but always the Publick good, for the end of their Counſels; nor flatter their Princes in their Humours to pleaſe them only. Let them abſtain from Factions and unlawful Meetings or Aſſociations. Diſſemble nothing that they ought to ſpeak, nor betray what they ought to conceal. Let them approve themſelves impenetrable to the corruptions of Foreigners, and not poſtpone the Publick Buſineſs to their private Concerns and Pleaſures. VII. *The Duty of Privy Counſellours.*

LET the *Clergy*, who are appointed publickly to adminiſter in *the ſacred Offices of Religion*, perform their work with gravity and attention; teaching the Worſhip of God, in Doctrines, that are moſt true, and making themſelves an eminent Example of what they preach to others: that the dignity of their Function, and the weight of their Doctrine may ſuffer no dimi- VIII. *The Clergy.*

diminution by the Scandal of an ill led Life.

IX. *Publick Readers.* LET ſuch who are publickly employ'd to *inſtruct the minds of People in the knowledge of Arts and Sciences,* teach nothing that is falſe and pernicious; delivering their *Truths* ſo, that the Auditors may aſſent to them, not out of a Cuſtom of hearing but for the ſolid Reaſons that attend them: and avoiding all Queſtions which encline to embroil Civil Society; let them aſſure themſelves, that whatever humane Science or Knowledge returns no good to us either as men or Subjects, the ſame deſerves their Cenſure as impertinent Vanity.

X. *Lawyers.* LET thoſe Magiſtrates, whoſe Office it is to *diſtribute Juſtice,* be eaſie of Acceſs to all, and ready to protect the Common people againſt the oppreſſions of the more mighty: adminiſtring Juſtice both to Rich and Poor, Inferior and Superior with a perfect Equality. Let them not multiply Diſputes unneceſſarily; abſtain from Corruption; be diligent in trying of Cauſes, and careful to lay aſide all Affections that may obſtruct ſincerity in Judgment; not fearing the perſon of any man while they are doing their Duty.

LET

LET the *Officers of War* diligently Exerciſe their men in all occaſions and harden them for the enduring the Fatigue of a Military Life, and preſerve the Diſcipline of them inviolable. Let them not raſhly expoſe them to the danger of the Enemy, nor defraud them of any of their Pay or Proviſions; but procure it for them with all readineſs they are able, and keep them in the love of their Country, without ever ſeducing them to ſerve againſt it. XI. *Officers of the Army.*

ON the other hand, let the *Soldiers* be content with their Pay, without plundering, or harraſſing the Inhabitants. Let them perform their Duty couragiouſly and generouſly in the defence of their Country; neither running upon danger with Raſhneſs, nor avoiding it with Fear: Let 'em exerciſe their Courage upon the Enemy, not their Comrades; and maintain their ſeveral Poſts like men, preferring an honourable Death before a diſhonourable Flight and Life. XII. *Soldiers.*

LET the *Miniſters of the Commonwealth in foreign parts* be cautious, and circumſpect; quick to diſcern Solidities from Vanity, and Truths from Fables: in the higheſt degree, Tenacious of Secrets, and XIII. *Ambaſſadors and Envoys.*

obstinately averse to all Corruptions out of their care of the Good of the Commonwealth.

XIV. *Officers of the publick Revenues.* LET the *Officers for Collecting and disposing of the Publick Revenue* have a care of using needless Severities, and of encreasing the Subjects Burden for their own Gain, or through their troublesom and petulant humours. Let them misapply nothing of the publick Stock; and satisfie the persons who have Money to be paid out of it, without delays unnecessary.

XV. *The continuance of the Duties aforesaid.* ALL these *Particular* Duties of Subjects *continue*, during the time of Employment: And when that ceases, the other expire also. But their *General Duties are in force*, so long as ever Men continue to be *Subjects*: that is, till by either the *express* or *tacit* Consent of the Nation, they depart thence, to fix the Seat of their Fortunes elsewhere; that they are banisht, and deprived of the Rights of Subjects for their Crimes; or being overcome in Battel, they are forced to yield to the disposal of the Conqueror.

The End.

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